
(2014) 12 SHI CK 0097
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 218 of 2004

Deep Finance Ltd.

APPELLANT

Vs

Jublee Highway Transport Company Ltd.

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2014) 12 SHI CK 0097

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Suneet Goel, Advocate for the Appellant

Judgement

Sanjay Karol, J.—Jubilee Highway Transport Company Ltd., respondent No. 1 herein, filed a suit for permanent prohibitory injunction against appellants No. 1 and 2 as also respondent No. 2. The appellants herein, being defendants No. 2 and 3, filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"), praying for referral of the dispute(s) to the Arbitrator named in the agreement(s) dated 16.1.2001 and 20.1.2001 entered into between the parties. Plaintiffs, in response to the application, though did not dispute execution of the agreement, but raised plea of delay and laches. Vide impugned order dated 1.12.2004, passed by Civil Judge (Junior Division), Court No. 1, Kangra, in CMA No. 251-VI/04, titled as, Jubilee Highway Transport Co. Ltd. v. Parveen Finance Company and others, trial Court has dismissed the application holding, execution of the agreement to be shrouded by fraud and misrepresentation.

2. Significantly before filing written statement to the plaint, petitioners herein filed the application. Despite thereof, on 25.6.2003, trial Court directed the defendants to also file written statement. Procedure so adopted, to say the least, was contrary to the provisions of the "Act". Be that as it may, the fact of the matter is that prior to filing of the written statement, at the first instance, appellants herein had filed an application, seeking referral of disputes to the

Arbitrator(s), in terms of the similar Arbitration Clause so contained in the agreement entered into between the parties, relevant portion of which is extracted as under:-

"25.(A) All disputes, difference in respect of rights claims and obligations of the parties hereunto or their enforcement or performance, the same arising out of this Hire Purchase agreement, including disputes touching the interpretation, operation or affect to any of the clauses or terms and conditions of this Agreement shall be referred to the sole arbitration of any one of the arbitrators mentioned in the Panel of Arbitrators herein below at the option of the party raising the dispute or difference referred to above in accordance with the provisions of Arbitration Act or any statutory modification thereof. And in the event of appointed Arbitrator/s inability, incapacity, death or refusal to act, the vacancy shall be filled from amongst the remaining Arbitrators named in the Panel of the Arbitrators at the option of the party raising the matter in difference. The reference shall not be determined by the death of the Hirer or on the winding up of the owner.

PANEL OF ARBITRATORS

- (1) Sh. O.P. Kamboj, Advocate, Jalandhar.
- (2) Sh. Vijay Sharma, Advocate, Jalandhar.
- (3) Miss Taranjit Kaur, Advocate, Jalandhar.

The party raising of dispute shall give 15 days notice of their intention to make the reference to the other Party or parties addressed to his or their usual place of business or residence or at his or their last notified address and the notice shall be deemed to have been served when it would have been normally delivered. On the expiry of said period of 15 days, the party giving the notice shall alone be entitled to make a reference to Arbitrator and it will not be necessary to make a joint submission of reference to Arbitration which reference shall not be objected to by other party as being unilateral.

The award of the Arbitration with or without enquiry of evidence shall be final and binding on the parties and it will not be open to any objection. It will be at the sole discretion of the Arbitrator to take evidence or to hear any party or not and to arrive at his decision in any way he likes even behind the back of both or either of the parties.

The fee of the Arbitrator is fixed at Rs. 1250/- which shall be paid in the first instance by the party raising the dispute and matter in difference and shall be borne by the party at fault at the discretion of the Arbitrator along with the costs of Arbitration. It is further agreed that the Arbitrator may from time to time, with the consent of the parties enlarge & extend time for making and signing the Award."

3. The execution of the agreement is not disputed by the parties as is evident

from Para-2 of the plaint. Whether the agreement stands executed by fraud or misrepresentation, is the question which needs to be examined by the Arbitrator himself, more so, when execution, validity or legality of the agreement is not questioned by the plaintiffs in the suit. As such, impugned order dated 1.12.2004, passed by Civil Judge (Junior Division), Court No. 1, Kangra, in CMA No. 251-VI/04, titled as, Jubilee Highway Transport Co. Ltd. v. Parveen Finance Company and others, needs to be quashed. Ordered accordingly. The dispute inter se the parties, is referred to arbitration in terms of Clause 25 of Agreements dated 16.1.2001 (Annexure P-5) and 20.1.2001 (Annexure P-6).

With the aforesaid observations, present petition stands disposed of, so also, pending application(s), if any.