
(1999) 11 DEL CK 0053
In the Delhi High Court
Case No : Suit No. 2900/95

Escorts Finance Ltd.

APPELLANT

Vs

Coirform (India) Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Citation : (2000) 2 AD 26 : (2000) 84 DLT 285

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Judgement

Mukul Mudgal, J.—This is an arbitration petition, on behalf of the petitioner, u/s 20 of the Arbitration Act, 1940 (hereinafter referred to as the "Act") seeking a direction to the respondents to file the original of Arbitration Agreement in this Court & also an Order of reference of the disputes to arbitration.

2. The Petitioner is a Company registered under the Companies Act and in engaged in the business of leasing, hire-purchase, and providing other modes of finance. Mr. Atul Sheopuri, Manager (Operations) of the plaintiff firm is having Authorising Letter (Annexure-A at Page 14 of the paper-book) to represent the company on behalf of the firm. The defendant No.1 is a Pvt. Ltd. Company, having its Regd. Office at 14/6, Mathura Road, Faridabad-121003 and defendant No. 2 is a director of the Defendant No.1/Company.

3. The petitioner entered into contract on 23.7.1993 for hiring out certain plant and machinery to the respondents.

4. Clause 21 of the Contract Agreement provided for the arbitration and reads as follows:

"21. ARBITRATION AND JURISDICTION - Any difference or dispute, between the parties shall be settled amicably in the first instance. Unresolved differences or disputes shall be settled by arbitration by a sole arbitrator to be appointed by the owner. The arbitration shall be conducted in accordance with the provisions of

the Indian Arbitration Act, 1940, any statutory modification thereof and Rules made thereunder. The award of the arbitrator shall be final and binding on the parties. The Courts at Delhi shall have exclusive jurisdiction in all matters arising under this Agreement."

5. There were some disputes in relation to the payment of hire charges which arose from the contract agreement and on delivery of goods, various requests were made by the petitioner and respondents failed to make payments and settle the final bill. Ultimately the petitioner sent a Legal Notice dated 20.6.1995, (Annexure-F at Pages 32-34 of the paper-book) asking the respondent No.1 to pay a sum of Rs. 4,73,328/- towards hire charges and a further sum of Rs. 72,051/- being overdue charges within 15days of receipt of the notice, failing which it was said that the petitioner shall be constrained to treat the factum of non-payment as a dispute and to refer the matter for adjudication to a sole arbitrator, to be appointed by the plaintiff-firm in terms of the Arbitration Clause No. 21 of the Hire Purchase Agreement. However, the respondent No.1 failed to respond the said Notice despite receiving the same, leading to the present petition. The petitioner had also filed a criminal complaint against the respondent No.1 in July 1995 u/s 138 of the Negotiable Instruments Act which is pending before the Court of the Metropolitan Magistrate.

6. The Suit has been proceeded ex-parte against the respondents by this Court's Order dated 22.9.1997. Thereafter affidavit by way of evidence has been filed by the petitioner on 23.3.1999 which supports the pleas made in the petition under Sec. 20 of the Arbitration Act 1940. There is no rebuttal of these pleas. An additional affidavit dated 15th September, 1999, giving details as per the Order of this Court dated 22nd April, 1999 has been filed and is on record. The same states that a sum of Rs.11,42,758/- was due to the plaintiff-firm towards arrears and a further sum of rs.7,09,992/- was due to it towards future interest. A further amount of Rs.1,56,658/- was also due to it against overdue interest payable at the contractual rate.

7. There is no appearance on behalf of the petitioner in Court today.

8. Accordingly, the petition is allowed and the respondents are hereby directed to file the original arbitration agreement in this Court within eight weeks from today & refer all the disputes for the consideration by a Sole Arbitrator. The petitioner/ owner in Hire Purchase Agreement is directed to appoint an Arbitrator in terms of the Arbitration Act within a period of 12 weeks from today.

9. In view of the above, the petition stands disposed of.