

(1996) 07 DEL CK 0081

In the Delhi High Court

Case No : Interim Application No. 1552 of 1995 and Suit No. 425 of 1995

Goodwill India Ltd.

APPELLANT

Vs

Tonu Constructions

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Arbitration Act, 1940 — Section 20

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Citation : (1996) 3 AD 598 : (1996) 64 DLT 16 : (1996) 38 DRJ 321

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : S.K. Mehra and Tiger Singh, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) This order will dispose of the application of the petitioner for the appointment of a Receiver to seize the equipment namely One number Stanford Eder Hydraulic Excavator Model R 825 Lc, Machine Sr.No.06.1010/8710 and all other necessary implements and accessories from the possession of the respondents and to keep the same in his safe custody till the decision of the suit.

(2) Brief facts of the case, which have resulted in the petitioner filing the present application, are that the petitioner, alleging itself to be engaged in the business of hire purchase and leasing, is alleged to have purchased hi-: # :- I.A.1552/95 in Suit No.425/95

(3) One number Stanford Eder Hydraulic Excavator Model R 825 Lc, Machine Sr.No.06.1010/8710 with necessary implements and accessories from M/ s.Stanford Engineering Limited, Alwar and had given the same to respondent No.1 on lease.

(4) While the total value of the excavator was Rs.23,77,280.00 , a sum of Rs.3,57,280.00 was deposited by respondent No.1 and the balance amount of Rs.20,20,000.00 was paid by means of three cheques between April 10, 1987 to

April 27, 1987 by petitioner to M/s.Stanford Engineering Limited. The excavator was directly delivered to respondent No.1. The Lease Agreement dated 30th March 1987 was entered into between the parties. Under the said agreement, a total amount of Rs.28,68,500.00 was to be paid by respondent No.1 to the petitioner in 36 installments starting from April 25, 1987. 35 of these installments were of Rs.80,000.00 each and the last Installment was of Rs.68,500.00 The installments were to be paid regularly every month.

(5) Further allegations made in the petition are that the respondent failed to make payment of the said amount and, Therefore, a fresh Lease Agreement was entered into between the parties on 31st December 1990 whereunder the respondents agreed to pay a total sum of Rs.22,25,000.00 in 24 monthly installments commencing from 1st January 1991. First of these installments was of Rs.80,000.00 and remaining 19 installments were of Rs.75,000.00 each. The respondents are alleged to have committed defaults in the payment of installments which resulted in the petitioner filing the present petition u/s 20 of the Arbitration Act.

(6) It is contended that the petitioner company was all along the owner of the equipments and the same had been given to respondent No.1 only on lease and that on the failure of the respondents to pay the lease money the petitioner has a right to repossess the equipments. The disputes have also arisen according to the petitioner which are liable to be referred to arbitration. The petitioner, Therefore, prayed for filing of the agreement dated 31st December 1990 in court and to refer the disputes to the arbitrator named therein.

(7) Along with the suit, an application u/s 41 of the Arbitration Act read with Second Schedule thereto and Order 40 Rule I read with Section 151 CPC . was also filed for appointment of a Receiver for taking possession of the equipments as they allegedly belong to the petitioner.

(8) The respondents in the written statement have, at the outset, denied the execution of any Lease Agreement dated 31st December 1990 and the question thereof of the alleged disputes being referred to an arbitrator, according to the respondent did not arise. It is also the contention of the respondents that the petitioners had only financed the purchase of the equipments by making the payment of a sum of Rs.20,20,000.00 to the supplier with whom respondent No. 1 had booked the equipments and they are the real owners of the machines in question. The right of the petitioners to take possession of the equipments has also been denied. It is also stated that the respondents have already paid a sum of Rs.28,77,000.00 to the petitioner and no amount whatsoever is due from the respondents to the petitioner. On the other hand, the respondents have claimed certain damages from the petitioner which are alleged to have been caused due to the petitioner having not insured the equipments for which the premium is alleged to have been paid by the respondents.

(9) MR.S.K.MEHRA, Advocate appearing for the petitioner has contended that the

petitioner is a leasing company and it is not that the equipments were financed by the petitioner but the same were given on lease as is borne out from the Lease Agreement entered into between the parties. Mr.Mehra has tried to make a distinction between leasing of an equipment and financing the same by a finance company. The contention of Mr.Mehra is that in the case of leasing, the petitioner will continue to be the owner of the equipments and it has a right to take possession thereof at any time in case a default is made by the respondents in the payment of the installments payable under the Lease Agreement, It is also his contention that no right whatsoever has been given to the respondents to purchase the equipment which clearly show that it was a lease agreement and cannot even said to be an agreement of hire purchase.

(10) MR.MEHRA has also referred to the judgment reported as Pioneer Hi-Bred International Inc., Usa Vs. Pioneer Seed Company Ltd. & Another 1988 (1) Delhi Law 136 in support of his contention that the respondents having taken benefit under the agreement of lease cannot turn around and say that it was not a lease agreement.

(11) To find out as to whether agreement is an agreement of lease or is an agreement of hire- purchase or Finance, Mr.Mehra relied upon Damodar Valley Corporation Vs. State of Bihar and Others, ; K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, ; Sundaram Finance Ltd. Vs. State of Kerala and Another, .

(12) In MIs.Damodar Valley Corporation Vs. The State of Bihar (supra), M/s.Damodar Valley Corporation, with the object of constructing a number of dams, had entered into an agreement with the contractors. Under the agreement, the Corporation had agreed to make available to the contractors such equipment as was necessary and suitable for construction. The contractors were charged the actual price paid by the Corporation for the equipment and machinery thus made available. The equipments thus supplied by the Corporation to the contractor was classified into two groups namely Group A and Group B. The machinery in Group A was to be taken back from the contractor by the Corporation after the completion of the work at their residual value, which was to be calculated in a manner set out in the agreement. The machinery in Group B was to become the property of the contractors after its full price had been paid by the contractor. The Sales Tax Officer assessed the Corporation to sales-tax. The contention of the Corporation was that in the facts and circumstances of the case, it could not be held that the property in the case included in Group A did pass to the contractors and the transaction amounted to a sale and that the transaction amounted only to a hire-purchase agreement. It was on these facts that the court held that the construction of the terms of the agreement between the parties, the transaction was a sale on deferred payment with an option to repurchase and not a mere contract for hiring as was being contended on behalf of the Corporation.

(13) INK.L.JOHAR & Co. Vs. Deputy Commercial Tax Officer, (supra), the court

was again considering as to whether in the facts and circumstances of that case sales-tax could be levied on the goods which had been agreed to be sold on the basis of hire purchase .As the court was not concerned in that case with the question of lease, in my opinion, the judgment will have no applicability on the facts of the present case.

(14) In *Sundaram Finance Ltd. Vs. The State of Kerala* (supra), the court was again concerned with the levy of sales tax and the question involved was whether the goods which had been sold under a hire-purchase agreement were liable to be taxed under the Sales-Tax Act. The facts in this case were that S, a company with their registered office in Madras, carried on business of financing purchase of motor vehicles on the security of those vehicles. The scheme for financing the purchase of the vehicle was that the customer purchased the vehicle from the dealer directly and got it registered in his name. At his request S agreed to advance the balance of the price remaining to be paid, and pay it to the dealer on the customer's executing a promissory note for repayment of the amount, a hire-purchase agreement and other related documents. On repayment of the amount stipulated to be paid, the vehicle became the sole and absolute property of the customer. The exigibility to tax on the alleged "sale" resulting from payment of all installments under the hire-purchase agreement was at issue. It was in these facts that the majority opinion of the court was "that the intention of S in obtaining the hire-purchase and the allied agreements was to secure the return of loans advanced to their customers, and no real sale of the vehicle was intended by the customer to S and consequently, there was no re-sale by S to the customer, at the termination of the arrangement. The transactions were merely financing transactions. They were thus not exigible to sales tax".

(15) Subba Rao, J., however, giving a minority view held that the transactions purported to be hire-purchase agreements and they must be treated as such as the common intention of the parties was to enter into such transactions. The dealer and the financier were closely connected companies and for their own reasons they have split up the business of hire-purchase between them. In effect and in substance, the dealer without receiving the whole money put the customers in possession of the motor vehicles under the hire-purchase agreements.

(16) The court, Therefore, while interpreting the agreement held that true effect of the transaction may be determined from the terms of the agreement considered in the light of surrounding circumstances. The court further held that unless prohibited by the statute. Court has the power to go behind the documents and to determine the nature of the transaction, whatever may be the form of the documents. An owner of goods who purports absolutely to convey or acknowledges to have conveyed goods and subsequently purports to hire them under a hire- purchase agreement is not estopped from proving that the real bargain was a loan on the security of the goods. If there is a bona fide and

completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction, even though the reason for which it was entered into was to raise money. If the real transaction is a loan of money secured by a right of seizure of the goods, the property ostensibly passes under the documents embodying the transaction, but subject to the terms of the hiring agreement, which becomes part of the buyers title, and confer a license to size. When a person desiring to purchase goods and not having sufficient money on hand borrows the amount needed from a third person and pays it over to the vendor, the transaction between the customer and the lender will unquestionably be a loan transaction.

(17) It is in this background that I have to see as to what was the exact language of the transaction in the present case and whether any case has been made out by the petitioner for seizing the equipments.

(18) A conspectus of the aforesaid judgments of the Supreme Court would reveal that the court, while dealing with such matters, has to find out as to what was the real intention of the parties. The principles laid down by the Supreme Court can be summarised in the following manner:- 1. One of the test to determine whether a particular agreement is a contract of mere hiring or is it a contract of purchase on a system of deferred payment of the purchase price is whether there is any binding obligation on the hirer to purchase the goods and whether there was a right reserved to the hirer to return the goods at any time during the subsistence of the contract. If there is a right reserved to the hirer to return the goods at any time, then clearly it is not a contract of sale but is a contract of hire. 2. The court can go behind the documents to determine the nature of the transaction whatever may be the form of the documents meaning thereby that even if the documents had been camouflaged as an agreement of lease, the court can still go behind the transaction to find out whether the transaction was actually a lease transaction or it was a transaction to finance the equipments for which the money had been advanced by the financier or the leasing company.

(19) Though the case of the petitioner is that the equipment was purchased by it for delivery to the respondent however, from the documents which have been placed on record and which are not in dispute, it is clear that it was the respondent No.1 who had placed an order upon the dealer namely M/s.Stanford Engineering Limited in December 1986 and a proforma invoice had also been issued by the dealer in the name of respondent No.1, though a copy of the invoice has also been placed by the petitioner on record to show that the same was prepared in the name of the petitioner company. However, it is not in dispute that it was respondent No.1 who had paid the sum of Rs.3,57,280.00 to the dealer at the time of booking of the equipments. It is also not in dispute that till May 1992, the respondents had paid a total sum of Rs.28,77,100.00 to the petitioner. Under the lease agreement, no right has been reserved to the respondents to return the equipments at any stage during the tenure of the

agreement which is one of the test which has to be satisfied to hold that the agreement was an agreement of lease. After payment of the original amount of Rs.28,68,500.00 , which had been fixed under the lease agreement dated 30th March 1987, the residual value of the equipment which had been mentioned in the agreement is Rs.3,57,000.00 .

(20) To make the said agreement an agreement of lease, it must necessarily be mentioned therein that the lessee has a right to return the equipment at any stage during the tenure of the agreement. An unwilling lessee cannot be fastened with the liability to continue to have the equipment with him and pay the lease money, Therefore, to the lessor. Against the total amount which was liable to be paid by the respondents to the petitioner under the lease agreement dated 30th March 1987 was Rs.28,68,500.00 and this amount was to be paid up to 30th March 1990. The respondents had by 28th November 1988 paid a total sum of Rs.20,40,000.00 and the contention of the respondents is that as the balance amount had not been paid the lease agreement was reconstructed. The respondents have denied the execution of lease agreement dated 30th December 1990.

(21) On the basis of the material on record, prima facie, I am not satisfied that the agreement dated 30th March 1987 entered into between the parties was an agreement of lease.

(22) From the record, I find that on 24th January 1991, the petitioner had written a letter to the respondents complaining that in spite of talks which the petitioner company had with Sh.Jawahar Lal Jain of the respondents for reconstruction of the lease agreement, the respondents had not sent the same back to the petitioner after signing the same and the respondent was, Therefore, requested to expedite the matter.

(23) The original lease agreement dated 31.12.1990 which has been placed on record also shows that the same neither bears the stamp of the respondents firm nor the same has been signed on each page by the partners of the respondent firm. At this stage, I am not giving any opinion as to whether the signatures which are appearing on the lease agreement dated 31st December 1990 are the genuine or the forged signatures of the respondents. However, the fact remains that the execution of the said agreement has been denied by the respondents. Not only that, the stamp of the respondent firm docs not appear on the said documents but the alleged signatures also do not appear on each page of the document. In case this lease agreement had been executed on 31st December 1990, there was no occasion for the petitioner to write the letter dated 24th January 1991 reminding the respondents to sign the lease agreement and return the same to the petitioner. In view of the above reasons, I am, prima facie, of the opinion that the lease agreement dated 31st December 1990 appears not to have been signed by the respondents.

(24) As the petition itself is based upon the lease agreement dated 31st

December 1990 alleged to have been executed by the respondents which I have held, prima facie, not to have been executed by them, in my opinion, the petitioner is not entitled to any relief even in the interim application unless the execution of the lease agreement is proved. No interim relief can be granted in favor of the petitioner.

(25) For the foregoing, I feel that it will not be just and convenient to deprive the respondents of the equipment which is the source of livelihood of the said respondent and I am not inclined to appoint a Receiver to take over the equipments which are alleged to have been leased by the petitioner to the respondents. However, with a view to protect the interest of the petitioner, I restrain the respondents from transferring, alienating or parting with possession of the said equipments including the excavators.

(26) With these observations, the applications stand disposed of. Any observation made, while deciding this application, will have no bearing on the merits of the case.