

(2008) 01 RAJ CK 0093
In the Rajasthan High Court

Hanuman Singh

APPELLANT

Vs

Mahindra Finance Mahindra and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2008) 01 RAJ CK 0093

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Judgement

Ajay Rastogi, J.—Instant application has been filed u/s 11(6) of Arbitration & Conciliation Act, 1996 for appointment of Arbitrator.

2. Applicant purchased a Jeep on hire purchase basis bearing Registration No. RJ.01.P.5111 from respondent for a consideration of Rs. 3,69,800/ on 8th May, 2003 and respondent being a finance company advanced as alleged him a total amount of Rs. 3 lacs which was re-payable in 23 instalments. Applicant has come out with the case that despite he was making regular payment of its instalment, without any notice the respondent took away his vehicle on 9th August, 2005 on the premise that there is a default in payment of instalment. Applicant served legal notice for making appointment of Arbitrator since he disputed that there was no such instalment due and continuously payments were made by him, dated 4th December, 2006 [Ann.4], which was duly served in the office of respondents. This fact is not disputed that under the loan agreement executed between the parties there is Clause 29 for settlement of disputes through arbitration. Relevant Clause 29 of the loan agreement is reproduced as under:

All disputes, differences and/or claim arising out of these presents or in anyway touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender. In the event of

death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The arbitrator shall not be required to give any reason for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceeding shall be held in Mumbai.

3. Since the respondents failed to make appointment of Arbitrator, the application approached This Court on 31st January, 2007. It has come on record that after notice was served, respondents have appointed Arbitrator vide order dated 3rd May, 2007 [Ann.R/2].

4. Counsel for respondents submits that very notice served by the applicant cannot be said to be in consonance with the provisions of the Act. Since they themselves have proposed for making appointment of Arbitrator, whereas under Clause 29 of agreement it was lender who has discretion to make appointment. As such, it cannot be considered to be legal notice as provided under law. He further submits that once lender has appointed Arbitrator by invoking Clause 29 of the agreement may be after filing of this application on 3rd May, 2007, the present application has become infructuous and no appointment can now be made. In opinion of This Court, submission made by the counsel for respondents has no substance for the reason that legal notice was served by the applicant to make appointment of Arbitrator while invoking Clause 29 of the agreement and merely because he has proposed few names that in no manner could cease right of appointment which vests with the lender by invoking Clause 29 of the agreement in question.

5. As regards the submission with respect to making appointment of Arbitrator after applicant has approached This Court vide order dated 3rd May, 2007 that does not hold good in view of judgment of apex court in Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another, wherein it was observed as under:

So far as cases falling u/s 11(6) are concerned -- such as the one before us -- no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed u/s 11(4) and Section 11(5) of the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court u/s 11, that would be sufficient. In other words, in cases arising u/s 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application u/s 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator u/s 11(6) is forfeited.

6. Undisputedly, the applicant has approached This Court in January, 2007 and respondents have invoked Clause 29 of the loan agreement much thereafter. In view of the judgment of apex court [supra], their power stands forfeited and Chief Justice or his designated Judge alone holds competence to appoint Arbitrator u/s 11(6) of the Act.

7. In the facts and circumstances of the case, I consider it proper to appoint Shri Biharilal Gupta, District & Sessions Judge [Retd.], 48/64, Rajat Path, Mansarovar, Jaipur, as sole Arbitrator to whom the dispute shall be referred. Remuneration of Rs. 50,000/- & Rs. 5,000/- towards expenses [to be equally shared] shall be paid to the sole Arbitrator by the parties.

8. With the above observations, the application stands disposed of. Copy of this order be sent to Shri Biharilal Gupta, District & Sessions Judge [Retd.], 48/64, Rajat Path, Mansarovar, Jaipur, Arbitrator forthwith and parties are directed to appear before him on 23rd February, 2008 at 4.30 PM or any other date if informed by him.