
(2008) 11 P&H CK 0109
In the Punjab And Haryana At Chandigarh

HDFC Bank Limited

APPELLANT

Vs

Tara Singh

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Arbitration Act, 1940 — Section 11, 8

Citation : (2009) 3 PLR 625

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Through this petition, the petitioner-Bank is challenging the order dated 23.3.2007 vide which the learned Civil Judge (Junior Division), Jalandhar has dismissed the application moved by the petitioner-Bank under Sections 8 and 11 of the Arbitration Act.

2. It is the contention of the petitioner-Bank that as per the Agreement dated 1.9.2004 entered into between the petitioner-Bank and the respondent-plaintiff, there being arbitration clause as contained in Clause 29 of the said Agreement, the matter should have been referred to the Arbitrator as per the said Agreement. Clause 29 of the Agreement reads as follows:

29. ARBITRATION

All disputes, differences and/or claim arising out of or touching upon this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the Bank. The award given by such an Arbitrator shall be final and binding on the Borrower and Guarantor to this agreement.

3. Replying on the said Clause, the petitioner contends that all disputes,

differences and/or claim arising out of or touching upon this Agreement would be referable to the Arbitrator and, therefore, the application moved by the petitioner before the learned Civil Judge (Junior Division), Jalandhar, for referring the matter to the Arbitrator under Sections 8 and 11 of the Arbitration Act, should have been allowed. It is the contention of the counsel for the petitioner that the suit, which has been preferred by the plaintiff before the Civil Judge (Junior Division), Jalandhar, is for damages for of Rs. 1 lac on account of illegally detaining the vehicle of the plaintiff and causing loss to the business of the plaintiff. The said claim of damages arises from the Agreement dated 1.9.2004 and, therefore, should have been referred to the Arbitrator as per Clause 29 of the Agreement. It is the contention of the counsel for the petitioner that the plaintiff-respondent in Para 9 of the civil suit has stated that the vehicle remained in the illegal possession of the defendant from 29.07.2006 and was released on 9.8.2006 and the plaintiff has suffered damages to the tune of Rs. 1 lac on account of illegal tactics of the defendant and they are liable to pay the same to the plaintiff. This, the counsel for the petitioner states, is an offshoot of the Agreement dated 1.9.2004, which was entered into between the petitioner-defendant and the respondent-plaintiff.

Briefly, the facts leading to the filing of the suit are that the petitioner-defendant has advanced a loan of Rs. 6,70,000/- for the purchase of a truck to the respondent-plaintiff and, accordingly, entered into an agreement on 1.9.2004. The respondent-plaintiff agreed to pay the amount in 47 monthly instalments each. One instalment was taken in advance by the petitioner-defendant and the remaining 46 instalments were to be paid by the respondent-plaintiff in equal monthly instalments. The respondent-plaintiff handed over 46 post dated cheques of Rs. 16,023/- drawn on Indian Overseas Bank, Branch Nangal Township, Tehsil Nandpur Sahib, District Ropar, Punjab to the petitioner-defendant. It is the contention of the petitioner that some of the cheques, which were handed over by the respondent-plaintiff, were misplaced during transit and, therefore, the cheques could not be encashed. The petitioner informed the respondent-plaintiff about the said loss and claimed the amount along with interest, penalty and service charges. The respondent-plaintiff, according to the petitioner, did not pay the cheques, and therefore, he agreed to surrender the truck to the officials and the representatives of the Bank at Ambala and signed the letter, handed over the possession of the truck to the officials of the Bank on 29.7.2006. The respondent-plaintiff preferred a complaint against the petitioner-defendant before the President, District Consumer Disputes Redressal Forum, Jalandhar. A compromise was reached there, wherein the plaintiff has paid the entire unpaid instalments and 23 post dated cheques for the remaining future instalments were resubmitted by the respondent-plaintiff. It would not be out of way to mention here that it was merely the unpaid amount of instalments, which was paid by the respondent-plaintiff and not the service charges or penalty, which was claimed by the petitioner-defendant.

4. Now a suit has been preferred by the plaintiff-respondent claiming damages

for a period during which the truck of the plaintiff-respondent remained in possession with the defendant-petitioner i.e. from 29.07.2006 to 9.8.2006. The counsel for the petitioner contends that these damages, which the respondent-plaintiff is claiming, are arising out of the Agreement dated 1.9.2004, therefore, the application u/s 8 of the Arbitration Act was required to be allowed and the matter should have been referred to the Arbitrator as per the Clause 29 of the Agreement. He relies on Clause 13, which relates to events of default to contend that if the borrower fails to pay any sum due from him then as per Clause 17, the Bank was entitled to take possession of the vehicle with special reference to Clause 17.2(i) and 17.3. He further contends that in the light of these provisions, the Bank is authorized to take in custody the truck and the dispute would arise from the Agreement dated 1.9.2004. He relies on the judgment of the Hon"ble Supreme Court in the case of Rashtriya Ispat Nigam Limited and Anr. v. Verma Transport Company Civil appeal No. 3420 of 2006 decided on 8.8.2006 and India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd. Arbitration Petition No. 18 of 2005 decided on 8.3.2007 to contend that in case, there is a clause for reference to the Arbitrator in the agreement, that matter is required to be referred to the Arbitrator. He further relies upon a judgment of this Court in the case of Haryana State Electricity Board Vs. Uppal Engineering Company Pvt. Ltd. and Another, to contend that if a dispute arises and such dispute falls within the Agreement, the matter is required to be referred to the Arbitrator. He further relies upon the judgment of this Court in Bathinda Construction Company Vs. Chief Engineer, Bathinda Zone, to contend that all disputes between the parties to the contract were required to be referred to the Arbitrator except such disputes, which are excluded specifically, and, therefore, the matter should have been referred to the Arbitrator by the trial Court.

5. On the other hand, counsel for the respondent contends that a perusal of the suit (Annexure P-3) would show that no reliance whatsoever has been made by the respondent-plaintiff on the Agreement dated 1.9.2004. It is his submission that the suit for damages, which has been filed by the respondent-plaintiff is independent of Agreement dated 1.9.2004 and none of the claims, which has been made by the respondent-plaintiff, is covered by any of the provisions of the Agreement, which could come within the purview of Clause 19 of the Agreement so as to make it eligible for reference to the Arbitrator. To rebut the submissions of the counsel for the petitioner he submits that Clause 13 which has been relied on by the counsel for the petitioner, relates to the cases where any event of default appears on behalf of the borrower or the guarantor. In the present case, there was no default on the part of the plaintiff-respondent and, therefore, Clause 13 cannot be invoked. Clause 17 would come into force only in case of default, which is dependent on Clause 13 of the Agreement. He further contends that in case of any default on the part of the Bank, the borrower or the guarantor cannot claim any damages on the basis of the Agreement as there is no clause covering such dispute. It is his contention that the Arbitrator would be governed by the terms of Agreement and he cannot travel beyond the Agreement. Since

the Agreement does not provide for the cases where there would be default on the part of the bank, the plaintiff-respondent has no option but to file a civil suit and since it would not be covered by any of the terms of the Agreement, the claim was not referable to the Arbitrator. It is further his contention that no clause has been provided in the Agreement where a borrower could avail any remedy under the Agreement against the Bank and that no clause for damages has been provided under the Agreement, which would bring the dispute within the purview of the Agreement calling for the reference of the case to the Arbitrator. He relies upon a judgment of the Hon"ble Delhi High Court in the case of Bougainvillea Multiplex and Entertainment Center. Private Limited v. Shankar Rai C.R.P. No. 60 of 2007 decided on 3.11.2008 to contend that the Agreement was more or less unilateral in nature and it provided for penalties in case of default by the lessee but correspondingly it did not provide for any remedy to the lessee if the lessor failed to comply with his part of contract. He further contends that the Agreement also made no provision for compensation the lessee in such an eventuality. The claim for damages in the suit which was beyond the scope of arbitration or arbitration agreement would be maintainable and should not be "referred to the Arbitrator u/s 8 of the Arbitration Act.

6. I have heard the counsel for the parties and have given any thoughtful consideration to the submissions made by the counsel for the parties.

7. Perusal of the suit (Annexure P-3) would show that the said suit was a suit for damages of Rs. 1 lac on account of illegally detaining the vehicle of the plaintiff and causing loss to the business of the plaintiff. None of the Clauses in the Agreement dated 1.9.2004 (copy whereof has been attached as Annexure P-5) provides for any damages to be paid to the borrower in case of default on the part of the Bank or in case of non-compliance of any of the conditions by the Bank. The plaint would further show that the claim of the plaintiff is not based on the Agreement dated 1.9.2004. Claim for damages does not form any of the part of the clauses of the Agreement dated 1.9.2004 as far as the claim of the borrower is concerned which relates to against the Bank. As a matter of fact, no remedy is available under the Agreement, which would entitle the respondent-plaintiff to claim damages against the Bank under any of the clauses of the Agreement.

8. Further Clause 29 as reproduced above is totally arbitrary as it says that "the award given by such an Arbitrator shall be final and binding on the Borrower and Guarantor to this agreement." This clearly shows that there is no arbitration clause which would bind the Bank in case the Arbitrator passes an award against the Bank and it further shows that for the claim by the borrower, the arbitration clause is redundant and non applicable.

9. It is a settled proposition of law that the Arbitrator cannot go beyond the Agreement and since there is no provision, which would arise from the Agreement, which would support the claim of the damages of the respondent-plaintiff, the application of the petitioner-Bank u/s 8 of the Arbitration Act, cannot

be allowed.

10. In the light of what has been held above, the judgments cited by the counsel for the petitioner are not applicable to the facts of the present case as in the judgments referred to by the petitioner's counsel, the clauses of the Agreement did provide for arbitration and the claims were arising out of or touching upon the Agreement entered into between the parties.

In the light of the above, I do not find any merit in this petition and dismiss the same.