
(2019) 09 CAL CK 0196

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10664 (W) Of 2019

Md. Mofidul Islam

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 16
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0196

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Manas Kumar Barman, Shambo Chakraborty, Arghya Chakraborty, Ayan Banerjee, Debasree Dhamali, Tultul Das (Singh), Amar Singh

Final Decision : Disposed Of

Judgement

Protik Prakash Banerjee, J

This petition has been filed by the petitioner seeking intervention of this Court in a matter where there is an arbitration clause, being Clause 29 of the agreement made between the parties, appearing at page 44 of the writ petition. Clause 29 reads as follows:

"Arbitration : All disputes, difference and/or claims arising out of this Agreement whether during its subsistence or there after 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 Company.

The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Company, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act an arbitrator. Such person shall be entitled to proceed with

the reference from the stage left by his predecessor. The venue of arbitration proceedings shall be at Chennai at the Registered Office of the company which is presently at 'DARE HOUSE' No.2 (Old No.234), NSC BOSE ROAD, PARRYS, Chennai-600001 or such other place/location/city which the Company at its discretion may decide from time to time."

The case of the petitioner is that the respondents have dispossessed him of a vehicle by practicing fraud and by cheating the petitioner. As an indication of such fraud he has referred to a letter dated February 19, 2019 which was alleged to have been written by the respondent finance company, the respondent no.5 herein, to the petitioner purportedly giving a seven days notice within the meaning of Clause 11(a)(i) of the agreement whereafter on February 27, 2019 the vehicle was possessed/seized by the finance company even though it appears from page 131 of the writ petition that the purported notice was not posted till March 6, 2019. He submits that a complaint was made to the concerned Sub-Divisional Police Officer but no steps has yet been taken by the said officer.

On the other hand, the learned Advocate for the respondent no.5 has objected to my entertaining the writ petition on the ground of effective and adequate statutory alternative remedy, being arbitration, not only existing but also having been resorted to by the parties. In fact, such liberty was expressly reserved by an order dated June 26, 2019.

I am told by the petitioner that the subject vehicle has already been sold.

In that view of the matter, no effective purpose will be subserve in keeping the writ petition pending. It is needless to mention that whether the arbitration proceeding is proper in such circumstances or whether it is vitiated by fraud as alleged by the petitioner is not something that the writ Court can go into it under Article 226 of the Constitution of India. As recently held by the Hon'ble Supreme Court that Section 16 of the Arbitration and Conciliation Act if in a given case the petitioner challenges the validity of the arbitration agreement or alleges fraud, even if allegation of fraud is made the writ Court cannot go into it. In view of the order of a coordinate Bench there is no question of my interference with the arbitration because it is a statutory remedy which the parties have adopted. However, this does not prevent the respondent Sub-Divisional Police Officer from taking appropriate steps in accordance with law on the complaint made by the petitioner, if not already done. The writ petition is, therefore, no longer kept pending and no order is passed thereon except that the respondent no.3 shall consider the representation made at page 134 of the writ petition in accordance with law and come to a logical conclusion as expeditiously as possible. In the event, the action of the respondent finance company constitutes cognizable offences the respondent no.3 shall register the same as first information report and if not then he shall communicate his decision to the writ petitioner. In any case the same exercise shall be completed within a period of fortnight from the date of communication of this order.

I make it clear that arbitration proceeding shall not be stalled or stayed in any manner for any reasons whatsoever including pendency of this matter and criminal case if it is registered.

I have been fortified in this course of action by the decision of Ram Barai Singh & Co. vs. State of Bihar & Ors. reported in 2014 Law Suit (SC) 1081 which was placed before me and was decided on December 17, 2014 whose copy is kept on the file.

The writ petition is, thus, disposed of.

No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned Advocates for the parties, upon compliance of all formalities.