

(2002) 01 DEL CK 0075
In the Delhi High Court
Case No : Suit No. 1516/93

Motor and General Finance (India) Ltd.	APPELLANT
Vs	
Great Indian Roadlines and Another	RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Citation : (2002) 01 DEL CK 0075

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : S.K. Mehra, for the Appellant; Ajay Garg, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—M/s MGF (India) Ltd. has filed the present petition u/s 20 of the Arbitration Act seeking filing of the arbitration agreement and for making the reference of the disputes to the named arbitrator.

2. The facts alleged can be delineated to be that petitioner company is carrying on the business of purchaser of motor vehicles/equipments/machineries at its registered office at 17-B Asaf Ali Road, New Delhi. In due course of its business the petitioner purchased one Eicher Mitsubishi Canter Model FE 444 with 92.5 HP Direct Injection 4 Stroke Diesel Engine with certain configurations. The delivery of the vehicle had been given by Eicher Motors Ltd at Pithampur, Madhya Pradesh and had been brought to Delhi. The said vehicle thereafter was hired to respondent No. 1 (M/s Great Indian Roadlines) under hire purchase agreement dated 7th July, 1987 on the terms and conditions mentioned therein. Respondent No. 2 signed the said agreement of hire purchase as guarantor on behalf of respondent No. 1. The liability of the respondent is joint and several. The agreement was accepted and executed as well as signed on behalf of the petitioner company as well as the respondents. As per Clause 6A of the agreement the parties agreed that all disputes and differences arising out of the said hire purchase agreement shall be referred to the arbitration in accordance

with provisions of the Indian Arbitration Act and had agreed to appoint Shri Shashivansh Bahadur as their sole arbitrator.

3. The said hire purchase agreement was executed with respect to the said vehicle with a specified amount mentioned as the value of the vehicle. The amount had to be paid in 6 months. At the time of entering the agreement respondent No. 1 had paid Rs. 41,995/- and the balance had to be paid in installments. Respondents are alleged to have made defaults in the payment of hire purchase installment and committed breach of the terms and conditions of the said hire purchase agreement. The petitioner claims a specified amount to be due as hire money, damage caused to the car, recovery of double the amount of average monthly hire as provided in the agreement besides damages. It has been pleaded that cause of action for purposes of the present petition arose when the petitioner re-possessed the vehicle on account of breach of the agreement and rescinded the contract by serving notice dated 12th August, 1991 and called upon the respondents to pay the balance amount. In face of these facts and disputes having been so alleged to have arisen it is prayed that the arbitration agreement should be filed and reference be made to the named arbitrator.

4. In the reply filed the respondents have contested the petition. It has been alleged that petitioners never became or were owners of the vehicle in question. It was respondent No. 1 who had purchased the vehicle in dispute in its own name by payment of the amount. The alleged agreement dated 7.7.1987 is purported to have been signed by the respondents together with other papers in blank being in printed form without filling in the blanks. It has also been alleged that the present petition is not within time because respondent No. 1 lastly paid a sum of Rs. 7350 on 1.3.1990 vide cheque No. 767312 dated 1.3.1990 drawn on India Overseas Bank. Please even have been taken that this court has no pecuniary jurisdiction to hear the petition besides denying what has been alleged by the petitioner.

5. On basis of the said controversies having been raised this court on 12.4.1997 had framed the following issues:

1. Whether the respondents signed the alleged arbitration agreement on printed form having blanks?
2. Whether the claim of the petitioner is barred by time?
3. Whether the disputes sought to be referred to arbitrator are covered within the arbitration agreement filed by the petitioner?

6. Issue No. 2 : This was the main issue that was the subject-matter of controversy during the course of argument. Learned counsel for the respondents contended that the petition is time barred. The contract had been entered into on 7.7.1987. The last installment is purported to have been paid on 21st November, 1988 and period of three years had long expired before the petition as such was

filed on 8th July, 1993. On the contrary, applicants learned counsel had pointed that the amount had to be paid in 36 Installments. By virtue of the default of respondent No. 1 the agreement was not terminated. It was the option of the petitioner to terminate the same or not and Therefore the limitation would only start running when the agreement as such as terminated.

7. To appreciate the said controversy some of the facts which are not in controversy can again be delisted. The petition as such has been filed on 8th July, 1993. The agreement between the parties is purported to have been executed on 7th July, 1987. It contained, as alleged, an arbitration clause. The last Installment has been paid on 21st November, 1988.

8. Perusal of the agreement Ex.PW-1/1 between the parties reveals that the hirer was to pay to the petitioner monthly hire amount stated in Schedule B. Schedule B itself indicates that the total amount had to be paid in 36 Installments by month by month by 7th of each month. In other words the Installment had to be paid by 7th July, 1990. The agreement further recites that the owner can terminate with or without notice the hiring of the vehicle and re-take possession of the same if the Installments are not paid.

9. Paragraph 4 of the agreement which gives the right to the owner to terminate with or without notice the said agreement on specified grounds clearly indicates that it is not something that can be taken to be in existence for indefinite period. The right to terminate would only arise during the pendency of the agreement because as referred to above the amount had to be paid in 36 monthly Installments and once the period referred to above comes to an end the net result would be that agreement would come to an end also by efflux of time. The right to terminate would arise only during the said period in case of defaults.

10. Learned counsel for the petitioner in that event referred to the Division Bench decision of this court in the case of Globe Motors Ltd v. Mehta Teja Singh & Co. 24 (1993) DLT 214 The reading of the decision as such clearly reveals that in fact it does not support the contention of the petitioner because the certain question were left open but still the Division Bench held that the limitation would start from the date when the default as such had been committed. In paragraph 4 of the judgment the Division Bench held:

"The first contention raised by Mr. Andley the learned counsel for the appellant is that as the agreement was entered into on 1.6.1967 the application filed u/s 20 in November, 1973 is barred by time. It is common case that Article 137 of the Schedule to Limitation Act 1963, which provides for a period of 3 years is applicable to application filed u/s 20 of the Arbitration Act. Mr Andley urges that the right to apply accrued when the first default took place in payment of the monthly payment of Rs. 10,000/- in terms of Article IV(b) of the agreement and as admittedly company made no payment, limitation would start from August, 1967, and application had become barred by 1970. The learned single Judge however, has held that the firms" claim was repudiated only on 29-4-1971

Therefore, the period of three years is to be calculated from that date, and if that is done the application filed in November, 1973 was within time. We deem it unnecessary to examine whether the right to apply accrued from the date of repudiation, namely, 29-4-1971 because even accepting the argument of Mr. Andley that the period was to be calculated and the right to apply accrued when the company defaulted in making payment of Rs. 10,000/- monthly, it is evident that limitation would start from each default when it was committed. Thus for defaults committed for non-payment of monthly payments from October, 1970 would have to be treated within time as application was moved in November, 1973. The application for arbitration on the ground of imitation, therefore, could not be thrown out for right to apply accrued for part of the claim only from October, 1970 onwards, which was within time.

Of course it may have been open to the appellant to urge before the arbitrator that the claim of the respondents for a period prior to October, 1970 was barred by time. We decide nothing on this point because once it was held that the matter had to be referred to arbitration the other question, namely-whether any particular part of the claim is time barred or not, would evidently be a matter for the arbitrator to decide. We, Therefore, agree with the learned single Judge that the application was not time barred."

11. Reading of the said conclusions clearly show that on its broader aspect this court had not supported what is being urged that the limitation would start running only when the notice to terminate the agreement had been served. Therefore, the contention of the learned counsel that the decision rendered by this court in the case of Globe Motors Ltd. (supra) comes to his rescue must fail.

12. In fact the other decision of this court also would throw light on the said controversy. In the case of Motor and General Finance Ltd. v. Mahabir Prasad Chaudhary and Ors. 2000. 2 AD (Del) 393 this court held that when there is default in the payment of Installment it is not a case of continued cause and period of limitation would start running. The findings in this regard were:-

"...The respondent at that time had refused to hand over possession of the vehicle to the petitioner and it was, the Therefore, stated in the petition that the right to possess the vehicle now vested with the petitioner company and the respondent was holding the said vehicle illegally and adverse to the right of the petition company. If right to claim compensation, hire charges and repossess the vehicle had accrued to the petitioner in 1982 it is not understood as to how there would be a continuing cause of action in favor of the petitioner to repossess the vehicle on each day when it continued to remain in possession of the respondent. Even assuming that the right to repossess the vehicle had accrued to the petitioner on 22.1.1982 when last notice was given and when a representative of the petitioner company had approached the respondent to recover the vehicle, the petition could be filed within three years from the said date. Once the respondent had refused to comply with the terms and conditions of the contract and had refused not only to pay the hire charges and compensation but also to

return the vehicle a right had accrued to the petitioner to claim such charges and compensation and also to claim possession of the vehicle. That having not been done within three years from the said date, in my opinion, there is no force in the contention of the petitioner that right to repossess the vehicle and to claim double the hire charges would continue to accrue in favor of the petitioner on each day when the vehicle continued to remain in possession of the respondent."

13. Reverting back to the facts of the present case it is clear that the default had occurred after 21st November, 1988. The petition had been filed on 8th July, 1993 after the expiry of three years period. It is clearly barred by time. Even if it be taken for sake of argument that the period of limitation would start running after the three years period when the agreement came to an end still the net result is the same. The three years period came to an end on 6th July, 1993. The petition had been filed on 8th July, 1993. Once again it is barred by time and there is no other escape but to record that the petition as such must be held to be barred by time and necessarily must fail to this ground.

14. Issue Nos. 1 and 3 : Keeping in view the findings on issue No. 1 it is unnecessary to go into the controversies of these issues.

15. For these reasons petition being barred by time must fail and is dismissed.