
(2000) 01 DEL CK 0002
In the Delhi High Court
Case No : Suit No. 1902/87

Motor and General Finance Ltd. APPELLANT
Vs
Mahabir Prasad Chaudhary and Others RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Citation : (2000) 2 AD 393 : (2000) 1 ARBLR 428 : (2000) 83 DLT 672

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

Bench : Single Bench

Advocate : Mr. S.K. Mehra, for the Appellant;

Judgement

S.K. Mahajan, J.—The petitioner filed this petition u/s 20 of the Arbitration Act for reference of certain disputes to an Arbitrator. The facts in short are:-

2. That by Hire-Purchase Agreement dated 26th May, 1980 the petitioner gave on hire to respondent No.1 a motor-vehicle on the terms and conditions as contained in the agreement executed between the parties. The respondent did not make the payment of the hire installments in time nor did he return the vehicle and thus disputes having arisen between the parties, the matter was sought to be referred to an Arbitrator in terms of Clause VI of the agreement. The petitioner accordingly filed a petition being Suit No. 86- A/83 in this Court u/s 20 of the Arbitration Act for reference of the disputes to the Arbitrator. In that petition notice was issued to the respondent and certain interim orders were also passed by the Court. However on 17th October, 1985, the petition was dismissed in default.

3. Instead of reviving the said petition by filing an application under Order 9 Rule 4, the petitioner filed the present petition u/s 20 of the Arbitration Act for appointment of an Arbitrator.

4. On being served, the respondent No.2 filed the written statement and took the preliminary objections that the petition was not maintainable in as much as the earlier petition was dismissed in default which was not revived and the petition

was also beyond time. The respondent also resisted the petition on merits. On the pleadings of the parties, the Court on 18th April,1990, framed the following issues :

1. Whether the petition u/s 20 of the Arbitration Act is within time? OPP
2. Whether the petition is maintainable in view of the dismissal of a prior petition (S.No.186-A/83)? OPP
3. Whether the petition is signed, verified and instituted by a duly authorised person? OPP
4. Whether there is any legal and binding arbitration agreement between the parties and there is any referable dispute existing between the parties ? OPP
5. Relief.

5. Evidence was led by the parties by filing affidavits. It was stated that no oral evidence was required. I have heard learned counsel for the parties on the issues framed.

6. So far as Issue No.2 is concerned, I find that under Rule 4 of Order 9 CPC where a suit is dismissed in default, the plaintiff may, subject to the law of limitation, bring a fresh suit or he may apply for an order to set the dismissal aside. Filing of the second suit, Therefore, is not barred under Order 9 Rule 4 provided the same is within the period prescribed by the law of limitation.

7. The only point for consideration before the Court, Therefore, is whether the suit is within time.

8. Mr. Mehra appearing for the petitioner submits that under the agreement the petitioner was entitled to four type of reliefs:

1. Recovery of arrears of hire money.
2. Recovery of arrears of compensation charges for late payment;
3. Recovery of possession of the vehicle; and
4. Interest as per the agreement.

9. He submits that even if the right to recover hire money has become barred by time the petitioner would be entitled to claim possession of the vehicle as the same is allegedly in the wrongful occupation of the respondent and he will continue to be entitled to claim compensation till such time the vehicle was returned to the company. He further submits that till such time the vehicle is recovered the dispute is continuing in respect of the said relief. He also submits that the petitioner will also be entitled to claim double the hire money for the period of wrongful possession of the vehicle by the respondent. Thus, according to Mr. Mehra the cause of action is continuing and the period provided under Limitation Act has not expired. He refers to Section 22 of the Limitation Act

which states that in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or tort, as the case may be, continues. The contention Therefore is that it is a case of continuing cause of action till such time the vehicle is returned and double the hire money is paid by the respondent to the petitioner for wrongful possession of the vehicle. He also submits that the company has till date not terminated the contract and, Therefore, the relevant Articles of the Limitation Act which will apply to the case are Articles 55, 70 and 91. Under Article 55 cause of action will accrue when the contract is broken or when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.

10. According to Mr. Mehra as the breach is continuing the cause of action will also continue. Under Article 70 the period of limitation to recover the moveable property is 3 years from the date of the refusal of the payment. According to Mr. Mehra as the vehicle has not yet been returned and the contract has not been terminated the petition to recover the vehicle is within time. Under Article 91 the time to recover possession for wrongful detention of any specific movable property is 3 years from the date when the possession will become unlawful. According to him, Therefore, the petition is within the period of limitation.

11. I have given my thoughtful consideration to the contentions made by Mr. Mehra, however I have not been able to make myself agree with the same.

12. A perusal of the earlier petition clearly show that the petitioner, when he filed the same on 20th December, 1982, had clearly stated that cause of action for filing the petition had accrued firstly on 26th May, 1980 and then on 2nd July, 1981; 15.12.81 and 22.1.82 when the respondents were served with notices and asked to comply with the terms and conditions of the agreement. It was also stated in that petition that on account of the breach of contract and on account of the respondent holding the vehicle illegally and adverse to the rights of the petitioner company and the respondent having failed to comply with the terms and conditions of the agreement, the petitioner had a right to recover the vehicle from the respondent. Under the agreement the respondent No.1 was required to pay the hire-charges in equal monthly installments within 36 months. First of such payment was made on 2nd July, 1980. Even assuming that the right accrued to the petitioner for recovery of installments accrued on the date when the last of such Installment had become due, the cause of action for recovery of this amount accrued to the petitioner on 2nd June, 1983. In a suit or a petition for reference of the disputes to arbitration Therefore to recover this amount on the expiry of 3 years from 2nd June, 1983 will be clearly beyond time. The present suit having been filed on 13th August, 1987 for reference of disputes regarding recovery of this amount was, Therefore, clearly beyond time.

13. On question as to whether the claim for recovery of double the hire charges will be within time or there was a continuing cause of action in favor of the petitioner for recovery of the said compensation and the vehicle, Mr. Mehra has

relied upon the judgment of this Court in *Globe Motors Ltd. Vs. Mehta Teja Singh and Co.*, wherein it was held that limitation would start from each default when it was committed. In this case under the hire purchase agreement dated January 1, 1967 the hirer was required to pay the hire-charges within a period of 3 years from the date of hiring of the vehicle. One of the installments for the month of August, 1967 being not paid, the company filed a petition u/s 20 of the Arbitration Act in November, 1973 for reference of the disputes to the Arbitrator. While deciding the objections of the respondent in that case that the right to sue having accrued in August, 1967 when there was default in the payment of the instalment, the petition was beyond time, the Court held that such installments were to be paid up to a period of 3 years and the petition having been filed from the date when the last Installment was due, the petition was within time. It was in that context that the Court held that each default would give cause of action to the petitioner to file a suit within three years from such default. The Court in that case still left the question that the claim which prior to October 1970 was barred by time be decided by the Arbitrator. This judgment, Therefore, in my view, will not be of any assistance to the petitioner.

14. The petitioner has next relied upon the judgment reported as *Union of India Vs. Vijay Construction Co.* 1981 RLR 215 where it was held that the right to apply for appointment of an Arbitrator will accrue to the petitioner when the cause of action accrued and not from the date with notice for appointment of arbitrator was given. I fail to understand how this judgment can be of any assistance to the petitioner.

15. When the earlier petition was filed in January 1983 it was clearly stated by the petitioner that on the respondent having committed default in the payment of installments right had accrued to the petitioner not only to terminate the contract but also to recover possession of the vehicle. In fact, the Respondent had sent its representative to recover not only the hire money and compensation charges but also to repossess the vehicle in 1982. The respondent at that time had refused to hand over possession of the vehicle to the petitioner and it was, 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 petitioner 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.

16. In my view, Therefore, the petition is clearly beyond time and the petitioner is not entitled to any relief therein. The petition is accordingly dismissed leaving the parties to bear their own costs.