
(1996) 02 DEL CK 0029
In the Delhi High Court
Case No : Suit No. 2589 of 1990

Motor and General Finance Ltd.

APPELLANT

Vs

Ram Niwas Sharma

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Citation : (1996) 02 DEL CK 0029

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : Sh. G.S. Sistani, for the Appellant;

Judgement

S.D. Pandit, J.—This suit is a petition u/s 20 of the Arbitration Act, 1940, plaintiff is a financial company. On 3.4.1987 respondent No. 1, Mr. Ram Niwas Sharma, approached the petitioner and entered into a hire-purchase agreement for hiring a Mahindra Jeep Model 1987. Defendant No. 2 agreed to stand surety to defendant No. 1 and hire-purchase agreement was executed between the parties on 3.4.1987 by which the respondent No. 1 took Mahindra Jeep 1987 Model bearing Engine No. 45-69928 Chassis No. 49-69928 and registration No. BPZ 7656. The respondent No. 1 had agreed to pay Rs. 2,600/- as first Installment and further 29 installments of Rs. 4,000/- each and interest from time to time. But respondent was irregular in paying the installments and, consequently his dues were increasing day by day. Out of total dues of Rs. 1,18,600/- he had paid only Rs. 32,100/-. On 3.10.1989 respondent No. 1 was owing Rs. 1,38,655/-. Though legal notices were served on respondents 1 and 2 to pay the amount they failed to pay the same. As per clause No. VI of the agreement between the parties if any disputes happened to arise between the parties then they were to be referred to the arbitrator and, consequently, the present petition is filed in the Court.

2. Respondents avoided summons, Ultimately they are served by substituted service by publishing their summons in daily "Dainik Hindustan", which has got greater circulation in the area where the respondents are residing but in spite of

the said substituted service the respondents did not turn up and, hence, the proceedings have proceeded ex parte against them.

3. Petitioner was directed to prove its claim on affidavit. Accordingly, petitioner has produced evidence on affidavit and petitioner has also produced documents in support of his claim. From the evidence produce by the plaintiff it is quite clear that respondent No. 1 was irregular in making payment of installments. Though he was called upon repeatedly to pay his dues he avoided to pay the same and, consequently, the petitioner has come before the court. From the documents filed on record there is no difficulty in accepting the claim of the petitioner of the petitioner that the agreement of 3.4.1987 has taken place between the parties. Clause No. VI of the said agreement clearly shows that all disputes, difference and/or claims arising out of the said hire-purchase agreement were to be settled by arbitration in accordance with the provisions of the Indian Arbitration Act, 1940. The parties had also agreed that either Mr. Shashivansh Bahadur or Mr. Inderjit Gulati were to be the arbitrators. Therefore, it is quite obvious that there is agreement between the parties to refer their disputes and claims to an arbitrators.

4. The material on record clearly shows that disputes have arisen between the parties an account of non-fulfilment of the claims of the petitioner by respondents 1 & 2. I, Therefore, hold that the present petition will have to be allowed. I, Therefore, pass the following order :

"Mr. Shashivansh Bahadur, Advocate, is appointed as the Arbitrator and he is directed to pass the Award on the following issues :

(1) Whether respondent No. 1 owes any amount to the petitioner on account of the hire-purchase agreement between petitioner and respondent No. 1 dated 3.4.1987 ?

(2) Whether respondent 2 is also liable to pay the amount found due to the petitioner ?

(3) What are the costs of arbitration proceedings, including, Arbitrator's fee, and who is liable to pay the same ?

Arbitrator should pass his Award within four months after entering upon reference."