
(1998) 01 DEL CK 0049

In the Delhi High Court

Case No : OMP 44 of 1998

M/s. Escorts Finance Limited

APPELLANT

Vs

M/s. Southern Investigation and Another

RESPONDENT

Date of Decision : 25-01-1998

Acts Referred:

Citation : (2001) 91 DLT 239 : (2001) 3 RAJ 131

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Ms. Mamta Mehra, for the Appellant; Mr. Deepak Bhardwaj, for the Respondent

Judgement

J.D. Kapoor. J.

1. This is an application u/s 9 of the Arbitration & Conciliation Act, 1996 for appointment of Receiver.
2. Put briefly the facts giving rise to this application are that the petitioner, a public company, is engaged in the business of lease financing and hire purchase of vehicles, equipments and machineries and also deals in inter corporate deposits and bill discounting and is, Therefore, a non-banking Finance company.
3. The respondent company approached the petitioner in the month of July, 1995 for taking one number computerised Semi Auto Analyzer ENZI 640 for all end point, fixed time, Kinetic, Multistandard Chemistries in addition to Hormones, Drug levels and with standard set of accessories from M/s Jaunach International, 5, Subodh Mullick Square(North), Calcutta and authorised the petitioner company vide letter dated 26th July, 1995 to pay to M/s Jaunach International a sum of Rs. 4,85,000/- on their behalf for the purchase of the above referred medical equipments. Accordingly the said medical equipments were purchased by the petitioner company from M/s Jaunach International, Calcutta vide proforma invoice No. JI/PI/29/95-96 dated 26th July 1995 for a sum of Rs. 4,85,000/- and paid the entire consideration price vide receipt dated 31st July, 1995. The

delivery of the said medical equipment was taken by the respondent No. 1 from M/s Jaunach International, Calcutta vide Challan dated 14th August, 1995 in good order and condition. The equipments were given under the Hire Purchase Agreement dated 28th July, 1995 to the respondent No.1 as the hirer on eh guarantee of the respondent No.2 on terms and conditions mentioned in Hire Purchase Agreement dated 2th July, 1995. The Hire Purchase Agreement was duly executed by the respondents, 1 & 2 at the registered office of the petitioner company at New Delhi for a total sum of Rs. 6,45,048/- including at New Delhi for a total sum of Rs.6,45,048/- including the value of the medical equipments and hire charges for a period of 36 months amounting to Rs.1,60,948/-. As per Schedule contained in the said agreement besides the payment of over-due interest/compensation charges for late payment @ 2.5% per month were payable. The respondent also deposited a sum of Rs.1,21,250/- towards security amount. Thus ownership of the machinery had remained with the petitioner company and it was agreed that the hirer shall keep the goods in his own possession at the place mentioned int he Schedule and shall not take or allow the same to be taken or removed there from without the previous consent in writing of the owner and maintain it and if necessary put the goods into proper repair and good working condition. It was also agreed that the hirer shall not hold himself out as the owner nor shall sell, offer for sale part with possession of the goods, assign or charge the goods for the benefit of the agreement nor shall create or cause to be created any lien on the goods unless and until the hirer becomes the owner of the goods. The other terms of the agreement provided as under:-

"8. The Hirer may at any time determine this agreement by notice in writing to the owner and by returning the goods to the owner at such address as the owner may specify, at his (the hirer's) risk and expense whereupon the provisions of Clause 9 shall apply.

If the Hirer shall make default in payment of any of the sums payable hereunder within seven days of the due date or shall fail to observe or perform any of the terms and conditions of this agreement whether express or implied, the owner may, without prejudice to the pre-existing liability of the hirer to the owner, determine this agreement without notice and the hiring herby constituted shall for all proposes determine and thereafter the hirer shall no longer be in possession of the goods with the owner's consent. The owner may be giving notice either orally or on writing to the hirer terminate the hiring under any other agreement between the owner and the hirer."

4. It is averred that after taking away the said medical equipments the respondent did not make payment to the petitioner as agreed despite several notices though part payments were made by cheques. Since the petitioner company is absolute owner of the said medical equipments in terms of the hire purchase agreement it is entitled to recover a sum of Rs.3,35,141/- towards over due hire money, Rs.99,320/- towards due interest besides a sum of Rs.89,590/-

due in stock i.e. the Installments still to fall due.

5. inspire of having contacted the respondent through the field staff and also issued reminders requesting the respondent to make the payments the respondent failed to comply with the notices. Hence this suit.

6. In reply, the respondent took the stand that it had never taken the said medical equipment nor had respondent No.2 stood guarantee and respondent No.2 denied signatures on the aforesaid documents. In the face of the denial of the averments of the petitioner by the respondents, the respondents were directed to be present in person vide order dated 3rd July, 2000. Vide order dated 16th April, 1998 Receiver was appointed to take into the possession the said medical equipments and if need be the assistance of the Local Police was also allowed to be taken. On visiting the spot the Receiver did not find the said equipments and submitted his report dated 27th June, 1998 accordingly. However inspire of the directions of the Court the respondents 1 & 2 did not appear in person and as a consequence the defense was struck off vide order dated 28th November, 2000.

7. In view of the striking off the defense of the respondents the claims made in the petition have to be deemed as correct and accepted. Since the Receiver did not find the suit machinery lying at the premises of the respondents or in the possession of the respondents the interim order appointing the Receiver and his report in this regard stands confirmed and is made absolute and accordingly the petition is allowed.