
(2000) 09 PAT CK 0075

In the Patna High Court

Case No : Request Case No. 38 of 1998 (R)

Prasad Motor Finance Pvt. Ltd.

APPELLANT

Vs

Sanjay Kumar Sahu and Another

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2001) 1 BLJR 205 : (2001) 1 PLJR 103

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard Mr. A.K. Rashidi, learned Counsel for the petitioner and Mr. S.N. Lai, learned Counsel for the respondents.

2. This is an application u/s 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner with a prayer for direction upon the respondents to refer the dispute for the adjudication before any one of the Arbitrator and for giving an Award.

3. Petitioner is a financier, advanced loan to respondent No. 1 for the purchase of Maruti car under Hire Purchase Scheme. Petitioner accordingly entered into an agreement being Hire Purchase Contract No. 36/90 with the respondent No. 1 for the loan amount of Rs. 1,04,000/-. Respondent No. 1 accordingly purchased the Maruti car being registration No. BR 17A 0020 which was insured by the Oriental Insurance Company Ltd. It is stated that respondent No. 1 paid only two instalments and failed to pay rest of the instalments. However, the payment of instalments was re-scheduled and fresh agreement being Hire Purchase Contract No. 173 dated 15.2.92 has been entered into between the petitioner and the respondent for balance amount of Rs. 1,80,200/-. In terms of the said agreement, Respondent No. 1 have to pay entire instalments by December, 1994.

4. Petitioner's case is that despite several request and reminders, respondent

No. 1 failed to pay entire instalments and tried to sell the vehicle without informing taking permission from the petitioner. When the petitioner insisted for repayment of the loan, respondent No. 1 raised number of disputes including the dispute with regard to the quantum of the amount payable to the petitioner. Accordingly, in terms of arbitration clause as contained in the agreement petitioner wrote a letter dated 17.8.98 through the advocate to get the dispute adjudicated by the arbitrator.

5. A show cause has been filed by respondent No. 1 in which it is stated that the dispute and the claim of the petitioner is barred by limitation and therefore, the dispute is not legally referable for adjudication to the Arbitrator. It is further stated that the petitioner is carrying on money lending business without any valid licence under the Money Lending Act and therefore, instant application itself is not maintainable. So far as merit of the case is concerned, it is stated in the show cause that before disbursing the loan petitioner obtained signature of this respondent on various printed forms and did not allow the respondent to put date below the signature. These blank forms have been converted into different letters including the letters of acknowledgment of dues.

6. From perusal of the pleadings of the parties, it is clear that there is no denial of financing of loan by the petitioner to Respondent No. 1 and execution of agreement, copies of which have been annexed as Annexures-2 and 8 to the application. The Arbitration Clause contained in the agreement provides that all the disputes and claims arising out of the agreement shall be settled by the arbitration in accordance with the provisions of the Arbitration Act, and shall be referred to the sole Arbitrator. Petitioner has given names of three persons to be appointed as sole Arbitrator.

7. Mr. S.N. Lal, learned Counsel for the respondent vehemently opposed the maintainability of the application on the ground of limitation. According to the learned Counsel, last date of repayment of the instalment was fixed in December 1994 and in that view of the matter, petitioner ought to have filed the application within three years from the date when Respondent No. 1 failed to fulfil the conditions of the agreement.

8. On the other hand, Mr. A.K. Rashidi has drawn my attention to Annexure-9 to the application which is copy of the letter dated 12.8.98 written by respondent No. 1 acknowledging the dues of the petitioner. According to respondent No. 1, the said letter is forged letter. In such circumstances, I am of the opinion that the question whether the claim of the petitioner is barred by limitation is a question that shall be adjudicated by the arbitrator and not by this Court. Specially, on the basis of Annexure-9, the claim cannot be rejected on the ground of limitation.

9. Having regard to the entire facts of the case, I allow the instant application and appoint Hon'ble Mr. P.K. Sarkar, a retired Judge of this Court as sole Arbitrator with a direction to adjudicate the dispute between the parties and

publish an Award in accordance with law within a period of four months from the date of receipt of copy of this order.