

(2015) 12 DEL CK 0127

In the Delhi High Court

Case No : FAO 420/2015 and CM No. 30314/2015

Rakesh Kumar

APPELLANT

Vs

Cideas Investment India Pvt. Ltd.

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2016) 2 AD 325

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

Advocate : Ashu Arora and Vishal Sharma, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.

CM No. 30315/2015 (Exemption) and CM No. 30316/2015 (Exemption)

1. Allowed subject to just exceptions.

FAO 420/2015 and CM No. 30314/2015 (Stay)

2. This is an appeal against order dated 05.10.2015, passed by the trial court in an application under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the petitioner.

2.1. By virtue of the said application, the appellant challenged the award dated 09.12.2000, which was, evidently, corrected by the learned arbitrator on 06.01.2001. This award was passed ex-parte, as according to the arbitrator, despite notice, there was no appearance.

2.2. Before the trial court, the appellant had challenged the award, (as noted in paragraph 7 of the impugned judgment) on the ground, that no notice of appointment of the arbitrator was received, and that, the vehicle lease agreement dated 19.10.1995 (in short the lease agreement) was not signed by

him in his capacity as a guarantor.

2.3. It was thus stated in support of this objection that the appellant had signed the lease agreement only in his capacity as the Managing Director of the lessee company i.e. M/s. Akshay Lease Investo India Pvt. Ltd. (hereinafter referred to ALIPL).

3. To be noted, under the aforementioned lease agreement, the appellant had obtained a loan for a vehicle bearing the following description :-

"Maruti Van - Model 1993 bearing registration No.DL5CA 0344"

4. The loan was advanced, admittedly, by the respondent company.

5. In this, rather short background, before me, the objection is confined, by Ms. Arora, to only one aspect out of the two referred to above, that is, the lease agreement was signed by the appellant only in his capacity as the Managing Director of the lessee company.

5.1. A perusal of the lease agreement shows that both in the opening part of the lease agreement and in clause 36, there is a reference to the guarantor i.e. the appellant. The trial court has, also, noticed this aspect of the matter. For the sake of convenience, extracts of the lease agreement including the opening part and clause 36 are reproduced hereinbelow :-

"VEHICLE LEASE AGREEMENT

THIS AGREEMENT OF LEASE made at New Delhi on this 19th October day of 1995 between Chaudhary Credits and Securities (P) Ltd., a Company incorporated under the Companies Act, having its office at Empire Plaza, Flat No. 210- 212, Mehrauli Gurgaon Road, Sultanpur, New Delhi, hereinafter referred to as Lessor of the First Part; and M/s. Akshay Lease Investo India (P) Ltd., 115A, Meenakshi Garden, Tilak Nagar, New Delhi, hereinafter called the Lessee of the Second part; and Sh. Rakesh Kumar, R/o. 174-175, Meenakshi Garden, Tilak Nagar, New Delhi, hereinafter the guarantor of the Third Part.

WHEREAS the Lessee has requested the Lessor to purchase one Maruti Van more particularly mentioned in Schedule I hereto (hereinafter referred to as the Vehicle) at the price mentioned in the proposal form signed by the Lessor.

AND WHEREAS the Lessee has offered to take on lease the Vehicle so purchased by the Lessor in terms of the proposal form.

AND WHEREAS the Lessor has agreed on the basis of the said proposal form to purchase and let on lease the Vehicle to the lessee upon and subject to the following terms and conditions :

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. That the lessor of the Vehicle hereby lets and the lessee takes on lease the vehicle from the Lessor upon terms and conditions hereinafter mentioned for the

term of two years commencing on the 19th day of October 1995.

2. The LESSEE shall pay to the Lessor during the said term monthly and proportionately for any part of a month the Lease charges set out in Schedule I hereto payable in advance on the 19th day of each English calendar month, the first such payment to be made on the 19th day of October 1995. All payments of Lease charges hereunder shall be made by the Lessee to the Lessor without any deduction or abatement whatsoever.

x x x x x

x x x x x

x x x x x

36. The "Guarantor" for the benefit of the lessee and further in consideration of the lessor agreeing to lease the Vehicle to the LESSEE on his guarantee agrees to observe and perform all the TERMS AND CONDITIONS of this Agreement and also hereby guarantee the due performance and observance thereof the LESSEE. The Guarantor further agrees to pay on demand any money due or which becomes payable under this Agreement and not paid by the LESSEE either by way of lease charges, residual charges, representatives expenses, collections expenses, expenses of repossession, garage rentals, cost of repairs and replacements, compensation charges for late payments, cost of legal proceedings, damage and any other charges. The Guarantor further agrees that any time granted to the LESSEE or any indulgence shown to him in respect of this Agreement either in the shape or releasing to the LESSEE, the Vehicle after detention or in any other manner, shall not prejudice the LESSORS's right to relieve the Guarantor from his guarantee which shall be continuing guarantee and his liability will be co-extensive with that of the LESSEE and that it shall not be necessary for the LESSOR to give notice to the Guarantor for any defaults committed by the LESSEE or any concession or indulgence shown to the LESSEE by the LESSOR.

37. x x x x

38A. x x x x

x xx x x

In witness whereof the parties hereto have executed this indenture on the day, month and the year herein above written.

GUARANTOR

SCHEDULE - I

Type of Vehicle : Maruti Van Model / Brand Name, if any : 1993 Capacity Rating :
Manufacturer's / Supplier's Name :

Description of the Vehicle : DL 5CA 0344 Engine No. Chassis No.

SCHEDULE-II

Lease Period : 2 years Monthly Lease : Rs.5,291 Total Lease Charges : Rs.1,26,984/-

LESSOR

for Chaudhary Credits & Securities (P) Ltd.

LESSEE for Akshay Lease Investo (India) (P) Ltd.

Sd/- Director

Sd/- GUARANTOR Managing Director.."

6. Based on the aforesaid, it is the contention of Ms. Arora, that in so far as the opening part is concerned, the appellant's name as guarantor was inserted after the lease agreement had been signed. It is also sought to be argued that the appellant did not append his signatures in his capacity as a guarantor.

7. This argument, in my view, is completely misconceived and to my mind, borders on dishonesty. Even if, I were to accept that the name of the appellant was inserted in the opening part of the lease agreement in his capacity as a guarantor, after it had been signed, the contents of clause 36 are a complete give away. Clause 36 like any other clause of the agreement is a typed clause, and that clause (the extract of which is given above), deals specifically with the obligation of the guarantor.

7.1. The learned counsel for the appellant does not dispute the fact that the appellant is an educated person and, in fact, I am told, is a graduate. Therefore, before signing the lease agreement, he would have surely gone through its various clauses including the clause related to the obligation of the guarantor. If what the appellant portrays before me is correct, he should have scored out the said clause which would have been the normal reaction of an ordinary and prudent man. The signature by the appellant on lease agreement are admittedly put alongwith the seal, which describes his designation as Managing Director. The appellant by appending his signature on the lease agreement adorned two hats. He acted for the lessee company (i.e. ALIPL), as also, for himself; there being no provision for a separate agreement qua the guarantor.

8. I have also asked the learned counsel for the appellant as to whether the principal debtor (i.e. the lessee company), had challenged the award. The learned counsel for the appellant submits that the principal debtor has not challenged the award and that its business stands closed. This fact, however, has not been pleaded in the appeal.

8.1. Furthermore, the learned counsel has not been able to tell me, as to, what is the exact legal status of the lessee company i.e. ALIPL. To my mind, the present appeal has only been filed to avoid a liability owed to the respondent company. A guarantor's liability is ordinarily, in law, co- extensive with that of the principal

debtor unless it is provided otherwise by the contract. Clause 36 of the lease agreement clearly states that guarantor's liability is continuing and co-extensive with that of the principal debtor.

9. For all these reasons, I find no merit in the appeal. The appeal and the pending application are accordingly, dismissed.