

(2003) 01 DEL CK 0040
In the Delhi High Court
Case No : FAO (OS) 301 of 2003

Siliguri Diagnostic Centre Pvt. Ltd.

APPELLANT

Vs

Escorts Finance Ltd.

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Citation : (2003) 6 AD 203 : (2003) 2 ARBLR 497 : (2003) 104 DLT 225 :
(2003) 67 DRJ 668 : (2003) 1 ILR Delhi 73 : (2003) 2 RAJ 369

Hon'ble Judges : R.S. Sodhi, J;B.A. Khan, J

Bench : Division Bench

Advocate : Piyush Kant Roy, for the Appellant; B.L. Wali, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—Parties are governed by a Hire Purchase Agreement in respect of a CT Scan Machine. Under this, appellant borrowed Rs. 96 lacs from respondent a finance company headquartered at Delhi for financing the purchase of the machine. He, however, defaulted in repayment. For this, respondent first served him a notice dated 17.3.1999 asking him to pay back the Outstanding amount and also invoked the arbitration clause and filed OMP No. 98/99 u/s 9 of the new Arbitration Act before this court for appointment of a Receiver. Appellant contested this primarily on the plea that this court had no jurisdiction in the matter as the whole transaction had taken place at Calcutta through respondent's sub office. His plea was, however, over-ruled by Ld. Single Judge on noticing that he had consented to the settlement of all matters arising out of the agreement by Delhi courts vide Clause 27 of the agreement and that his petition for transfer of the matter to Calcutta court was also rejected by the Supreme Court.

2. Appellant is aggrieved by this order leading to the appointment of Receiver for taking over the possession of the machine and has filed this appeal in a repeat exercise again insisting that this court had no territorial jurisdiction in the matter. His counsel Mr. Roy submitted that dismissal of appellant's transfer petition by

the Supreme Court was inconsequential and so was his agreement incorporated in Clause 27 of the Hire Purchase agreement providing for the jurisdiction of Delhi courts. He cited several judgments of the Supreme Court including *Hakam Sing Vs. Gammon (India) Ltd.*, and *M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company*, to suggest that the relevant Clause 27 of the Agreement providing for exclusive jurisdiction of Delhi Courts for adjudication of matters under the " agreement was useless and could not confer jurisdiction on this court which it did not possess otherwise.

3. There is no quarrel with the proposition that parties can't confer jurisdiction on a court where it does not possess it. But the question that arises is whether any part of cause of action arose within Delhi to confer jurisdiction on this court. The appellant has failed to discharge the burden and to lay any worthwhile foundation in this regard. He has only made a bald and generalised statement that this court had no jurisdiction as the whole transaction had taken place at Calcutta. He has not even chosen to place the copy of the Hire Purchase Agreement on record or to challenge the validity of its Clause 27 under which he had consented to the jurisdiction of Delhi courts. It is not his case that this clause was against any public policy or for that matter against terms of Section 28 of the Contract Act. Therefore, it could not be said or held in the circumstances that Clause 27 providing for jurisdiction of Delhi courts was bad and invalid on any count.

4. The judgments cited by Appellant's counsel are also of no avail as these relate to the application of CPC to the old Arbitration Act. But even if one were to go by the ratio of these, it would still have to be established by appellant that jurisdiction of this court was totally ousted in the matter. Because if it was found that even a part of cause of action arose at Delhi, it would enjoy the jurisdiction and in that case agreement of the parties contained, in Clause 27 would hold good as per the legal position enunciated in these judgments ruling that where two or more courts had jurisdiction, the agreement of parties to confer jurisdiction on any one of such courts exclusively was a valid agreement.

5. In the present case, respondent's OMP was filed u/s 9 of the New Act which provides for grant of interim measures by the principal civil court of original jurisdiction in a district including the High Court where these could entertain suits on the subject matter of arbitration. Having failed to show that jurisdiction of this court was wholly ousted, it appears to us that he wants to have the cake and eat it too by first agreeing to the jurisdiction of Delhi courts and then turning around to wriggle out of it. He also conveniently overlooks the fall-out of dismissal of his transfer petition on the subject matter by Supreme Court.

6. We other issue was canvassed before us. This appeal accordingly fails and is dismissed.