

(2001) 02 DEL CK 0077

In the Delhi High Court

Case No : OMP 74 of 2000

Smt. Ch. Nivedita Reddy

APPELLANT

Vs

Escort Finance Limited and Another

RESPONDENT

Date of Decision : 15-02-2001

Acts Referred:

Citation : (2001) 3 AD 688 : (2001) 91 DLT 166 : (2001) 58 DRJ 321 : (2001) 2 RAJ 457

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Ansuyya Salwan, for the Appellant; M. Dutta, for the Respondent

Judgement

J.D. Kapoor, J.—Admittedly the agreement of Joan did not contain an arbitration clause. Rather there was a clause in the agreement that the Court at New Delhi will have exclusive jurisdiction in all matters arising out of this agreement.

2. The petitioner had raised a loan amounting to Rs.5,85,000/- for financing a Cielo GLF Car which was repayable in 36 equated monthly Installments or Rs.22,466/- each. The monthly Installments paid by the petitioner amounted to Rs.2,92,058/-. On 6th February, 1998 the petitioner addressed a letter to the respondent call(SIC) upon the respondent No.1 to foreclose the contract from (SIC) years to 2 years which was ending by March, 1999 to March 1998 and expressed the willingness to settle the account Instead of settling the accounts the respondent No.1 through their recovery people seized the vehicle on 20th February, 1998 and disposed off the vehicle for an amount of Rs.2,35,000/-. Vide notice dated 10th June, 1999 the respondent called upon the petitioner to pay a further sum of Rs.4,04,601/-. In the said letter the respondent called upon the petitioner to make the payment of the outstanding amount as on 3rd March, 1999 together with future overdue interest @ 2.5% per month within seven days from the date of receipt of the notice, failing which the respondent would be constrained to initiate appropriate legal action in the competent court of law for recovery of the aforesaid amount payable by the petitioner. In the same notice it

was also mentioned that the respondent would refer the matter for arbitration to adjudicate the disputes to the sole arbitration of Mr. K.S. Jaggi, Advocate. In reply to the said letter the petitioner stated that there was no amount whatsoever which was legally due and payable by the petitioner and as there is no existing contract interse, the question of there being any dispute did not arise. The petitioner also made it clear that in the absence of and there being no dispute the question of calling upon the Arbitrator did not arise.

3. Now the moot question is whether the notice dated 10th June, 1999 and the reply sent by the petitioner as referred above can tantamount to arbitration agreement or not.

4. The learned counsel for the respondent has referred to clause (c) of sub-Section (4) of Section 7 of the Arbitration & Conciliation Act, 1996 to canvass that the reply referred above does not amount to an arbitration agreement. The said clause of the Act is as under:-

"(4) An arbitration agreement is in writing if it is contained in -

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defense in which the existence of the agreement is alleged by one party and not denied by the other."

5. A bare perusal of the said provision shows that in exchange of statements of claims and defense existence of an arbitration agreement should be alleged by one of the parties. Even in the notice dated 10th June, 1999 the respondent did not allege the existence of any arbitration agreement either in the loan agreement or in any other subsequent exchange of letters or communication. In the said letter in one breath the respondent threatened the petitioner with legal action in the Court of law in case of his failure to pay the outstanding amount and in the second breath appointed one Shri K.S. Jaggi, Advocate unilaterally as a sole Arbitrator without making any reference as to the existence of any agreement either in the loan agreement or any subsequent communication exchanged between the parties.

6. Agreement always involves two or more parties. There cannot be a unilateral agreement. Section 7 of the Act itself starts with the words that "arbitration agreement itself is a document signed by the parties. Thus unless and until the parties to the contract are signatories to the arbitration agreement or exchange of letters, telex, telegrams or other means of telecommunication provide a record of the agreement or during exchange of statements of claim and differences, one party alleges agreement and the other party does not deny the same, no dispute can be arbitrated upon.

7. Here the respondent arrogated the power of appointing the Arbitrator unto

itself without involving the petitioner or without even making any such intention on the part of the petitioner having given even tacit consent for getting the disputes settled by the Arbitrator and rushed to the Arbitrator for adjudication. By no stretch of imagination or construction the reply sent by the petitioner that since there is no outstanding amount due towards him which is legally recoverable mainly because of having not only seized the vehicle from him but also having disposed it off the question of calling upon the Arbitrator to enter into the dispute does not arise can tantamount or be deemed as an expression of intention by the petitioner having agreed to the suggestion or proposal or even the decision of the respondent in appointing Shri K.S. Jaggi, Advocate as sole Arbitrator for entering into the disputes between the parties.

8. I am afraid the provision of sub-Section (4) has been misconstrued by the counsel for the respondent and the reliance by the counsel upon Nimet Resources Inc. and Another Vs. Essar Steels Ltd., is misplaced wherein it was held that where some transactions have taken place between the parties and where the parties are not total strangers and where the exchange of correspondence or exchange of documents between the parties are not clear as to the existence or non-existence of the arbitration agreement in terms of Section 7 of the Act the appropriate course would be that the Arbitrator should decide such a question u/s 16 of the Act.

9. In the above referred case not only the arbitration clause existed in the original agreement between the parties but in the subsequent correspondence between the parties one of them denied the existence of arbitration clause and it was in view of these facts and pleadings of the parties that the above view was taken.

10. It is pertinent to mention that in the above referred case in the sale contract between the parties there was an arbitration agreement to the effect that the disputes arising out of the agreement shall be submitted to arbitration under COMEX and/or the Institute of Scrap Recycling Industries and/or the LME Rules, as the case may be. The confirmation letter was also sent by the petitioner acknowledging the execution of the contract between the parties but denied the liability to make the payment and also the very existence of the sales contract by taking the plea that the sales contract has not been signed by it and since there existed no disputes the question of arbitration did not arise. In the reply to the petitioner the respondent had denied the existence of any agreement between them and even denied any legal relationship between them. As is apparent the difference in facts involved in the instant case and the referred case sticks out for miles. The ratio is not at all applicable in the given facts of the case.

11. In view of the foregoing reasons I find that no arbitration clause or agreement existed between the parties and, Therefore, the Arbitrator had no jurisdiction to enter into the reference or the claim of the petitioner. Accordingly the petitioner is allowed and the award dated 24th August, 1999 is hereby set aside.