

(2013) 11 DEL CK 0076

In the Delhi High Court

Case No : CM (M) No. 977 of 2013, C.M. No's. 14810 of 2013 and 17498 of 2013

Sunil Chaudhary

APPELLANT

Vs

Carzonrent (India) Private Limited

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 10, 37, 9
Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2013) 11 DEL CK 0076

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Rohit Jain and Ms. Tajinder Viridi, for the Appellant; Sandeep Sethi Mr. Vijay Nair, Rajat Joneja and Mr. Prashant Jain, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—Since the facts in all the above said matters are common, therefore, all the petitions and pending applications as well as the contempt petitions are disposed of by a single common order. The petitioners in all the matters, who are the drivers, have filed the petitions under Article 227 of the Constitution of India against the order dated 17th September, 2013. The case of the petitioners is that the petitioners were offered an arrangement to own a vehicle at easy daily installment plan and also the assured business at a revenue sharing basis by the respondent-Company. The petitioners agreed to the arrangement and executed hire purchase and ownership agreement with the respondent-Company. It is also the case of the petitioners that they have paid some upfront amount/down payment and certain amount on daily basis. However, the respondent-Company stopped giving them the business and it was difficult for the petitioners to earn their livelihood. Not only that, the respondent-Company also took the possession of the vehicles forcibly from some of the drivers.

2. In nut shell, the case of the respondent-Company on merits is as under:-

(i) The vehicles are provided to the drivers under a self-employment scheme under the Radio Taxi Operation Agreement. As per the scheme, depending upon the condition of the vehicle and the amount spent in making the vehicle roadworthy and also depending upon the infrastructure cost of the respondent in the business, an amount of Rs. 10,000/- to Rs. 50,000/- is accepted as a non-refundable deposit by the respondent in the beginning.

(ii) Thereafter, depending upon the condition of the vehicle, a minimum daily guaranteed revenue has to be paid by the drivers to the respondent, besides 25% of the gross revenue generated by the drivers in a day through the booking infrastructure of the respondent. A driver is provided random bookings in a day through the GPS and booking software managed through the call centers of the respondent and a diligent driver can earn up to Rs. 3500/- a day merely through the respondent's system.

(iii) Over and above, the customers generated through the respondent, the drivers also take on board random personal customers, from whom they generate income. Such income, of course, is not accounted with the respondent and the respondent receives no part of such income. The aforesaid system of revenue sharing was introduced by an early existing scheme where irrespective of the revenue generated, the driver had to pay a minimum guaranteed amount of Rs. 1100/- to Rs. 1500/-. It is, therefore, wrong on the part of the petitioners to interpret the revenue sharing model of the respondent as a Hire-Purchase arrangement. This stand of the petitioners is belied by the Agreement itself.

(iv) Since the Agreement between the petitioners and the respondent-Company already stands terminated vide a termination-cum-demand notice dated 2nd September, 2013, the order as sought for by the petitioners would amount to a direction to perform an agreement which is determinable in nature and which has, in any event, been already terminated. The petition is, therefore, not maintainable.

3. The respondent filed the petitions u/s 9 of the Arbitration and Conciliation Act, 1996 before the Addl. District Judge (South-West-I), Dwarka, New Delhi, on the basis of arbitration clause subsist in the agreement executed by the petitioner. On 10th September, 2013, the following order was passed by the learned ADJ in one of the said arbitration petitions:-

V/Nama on behalf of respondent filed, same is taken on record. The learned counsel for the respondent submits that he is appearing in the matter on the basis of advance verbal notice received by the respondent from the petitioner.

2. I have heard the learned counsels for parties for some time. The learned counsel for the petitioner submits that respondent is in possession of vehicle bearing Regn. No. DL1RX/7319, belonging to the petitioner, the possession whereof had been handed over to him pursuant to Radio Taxi Operation

Agreement dated 22.02.2013. It is further stated since August" 2013, the respondent has not been accounting for the money collected by him by plying the said taxi, which is in violation of the aforesaid Agreement, which contains the arbitration clause as a mode of dispute resolution agreed by the parties jointly. It is further submitted that the contract of the respondent stands terminated by the petitioner vide notice dated 02.09.2013. It is further submitted that respondent is now acting as a free bird and he has deactivated the GPRS system installed in the vehicle and as such, petitioner is not even in a position to trace the movement of the vehicle and as such, the respondent can put the vehicle and the trade name of the petitioner in jeopardy. The vehicle can be used for any unauthorized purpose anywhere in India and as such a prayer is made that the respondent be directed to surrender the possession of the vehicle concerned to petitioner and thereafter the parties can negotiate about settling the accounts/ payment of refundable security to the respondent.

3. Per contra, the learned counsel for the respondent submits that the present petition is premature as in terms of Section 10 of the Agreement, the parties were supposed to make endeavour to amicably settle the matter within 30 days of arising of dispute and in case of failure of settlement talks, a further period of 15 days was required to be utilized by the parties and only thereafter, the case could have gone to the arbitration in terms of Clause 10. The receipt of termination notice dated 02.09.2013 is admitted.

4. At this stage, both the parties have expressed their willingness to settle the dispute by mode of mediation.

5. In my considered opinion, the interest of justice would be met if the respondent surrenders the vehicle in question to the petitioner within two days from today and the petitioner is directed to receive the vehicle and prepare an inventory in respect of attachment of the vehicle as well as relevant registration and other collateral documents of ownership and operation. The petitioner is further under an obligation to have the vehicle photographed from all sides and the same would be kept in safe condition. A memorandum of handing over would be prepared, whereupon the representatives of petitioner and respondent would sign and the said report be filed in this court within a week from today.

6. Let the case file be placed before Ld. Judge Incharge, Mediation Centre, Dwarka Courts on 16.09.2013 and thereafter before this Court on 28.09.2013.

4. After passing the said order, one of the petitioners had challenged the same before this Court by filing of the petition under Article 227 of the Constitution of India.

5. The petition being CM(M) No. 959/2013 was disposed of, with the following directions:-

The interim order was passed in the presence of the respondent. With the consent of the parties, the matter was referred before the Mediation Centre,

Dwarka Courts. The file was ordered to be placed on 16th September, 2013. In the order, it was recorded that thereafter the matter is to be listed before Court on 29th September, 2013.

In case the petitioners are aggrieved with the impugned order dated 10th September, 2013 which was passed in the presence of the petitioners, liberty is granted to the petitioners to file an appropriate application for vacation of the stay order. As far as present petition is concerned, no further orders are required to be passed. The same is disposed of.

6. After passing the said order, it appears that few petitioners have filed the application u/s 151 CPC before the learned trial Court for stay of operation of the order dated 10th September, 2013 and the same was disposed of by order dated 17th September, 2013. The said order reads as under:-

The next date of hearing in the matter is 28.09.2013. Case file has been taken up today pursuant to an application U/s. 151 CPC filed on behalf of respondent seeking stay of operation of order dated 10.09.2013, whereby this court had directed the respondent to surrender the vehicle in question to the petitioner.

It is apparent that the respondent had challenged the order dated 10.09.2013 before the Hon'ble High Court by way of Civil Misc.(Main) No. 959/2013, which came to be dismissed by the Hon'ble High Court, reserving liberty for the respondent to file an application for stay before this court. A perusal of record reveals that even prior to dismissal of the aforesaid petition, respondent had already filed an application before this Court, seeking stay of order dated 10.09.2013, meaning thereby that the respondent had ventured to pursue his remedy simultaneously before two fora, which is not a bonafide conduct.

Today I have heard the learned counsels for the parties and I do not prima facie find any ground to stay the operation of order dated 10.09.2013. At this stage, a strange request has been made on behalf of respondent that the respondent does not have the complete set of paperbook. I do not want to go into the bonafide or otherwise of this submission. Let a complete set of paper book be supplied to the learned counsel for the respondent from court record under acknowledgment.

At this stage, second set of petition supplied from the court record.

The learned counsel for the petitioner has filed an application, seeking appointment of Court Receiver to receive possession of the vehicle in question.

The learned counsel for the respondent on instructions submits that his client is ready to surrender the vehicle in question to the Court Receiver, latest by 10.00 AM tomorrow, i.e. 18.09.2013. The application is supported by the affidavit of Shri Anil Kumar Kain. He is accordingly appointed as "Court Receiver" in the present petition, with the authority to take possession of the vehicle bearing Registration No. DL1RX/7319 from the respondent. At the time of receiving possession of the said vehicle, the Court Receiver shall:

- (a) Get the vehicle in question photographed from all sides, particularly and conspicuously showing the Engine Number, Chasis Number and Registration Number;
- (b) Court Receiver shall prepare an inventory of the articles and documents pertaining to the vehicle;
- (c) The vehicle shall be kept in safe custody and no third party rights would be allowed to be created by the Court Receiver in respect thereof;
- (d) The Court Receiver shall obtain signatures of respondent at the time of receipt of vehicle and a report in this regard would be filed within a week from today.

Application stands disposed off in above terms.

Let reply to the main petition be filed on or before the NDOH. At joint request of the parties, the date of 28.09.2013 stands cancelled. Now, list the matter for further proceedings on 30.09.2013.

A copy of this order be given dasti to the Court Receiver.

7. The above said order was again challenged by some of the petitioners, one of them is Sunil Chaudhary, being CM(M) No. 977/2013. Notice was issued for 1st November, 2013. The operation of the orders dated 10th September, 2013 and 17th September, 2013 was stayed, subject to deposit of due amount of Rs. 50,000/- by the petitioner with the respondent within two weeks from 18th September, 2013. Subsequently, few petitioners have also filed the contempt petitions in view of the order dated 18th September, 2013, mainly, on the reason that despite of interim orders were passed, the respondent had taken the possession of the vehicles and also got arrested the drivers.

8. The stand of the respondent was that they have not taken the possession of the vehicles, nor they have violated the order dated 18th September, 2013. The FIRs against the petitioners were already pending and it was the police who have taken the action against the drivers as well as for seizing of the vehicles on the basis of pendency of the FIRs.

9. The respondent thereafter filed miscellaneous applications in all the matters, praying that the status-quo order passed by this Court be modified and the vehicles which are lying in the police station be released as the respondent is suffering financial loss due to non-user of the vehicles and no useful purpose will be served if the said vehicles are kept in police station and there are chances of destruction of the same. The statement was also made by the respondent not to dispose of the said vehicles after taking the possession thereof. In one of the petitions, being CM(M) No. 977/2013, the direction was passed to release the vehicle from the police station to the respondent on superdari as the respondent is the owner of the said vehicle. Further direction was passed by the Court to the respondent not to use or dispose of the said vehicle.

10. Today, when the matters are listed for hearing, Mr. Sandeep Sethi, learned Senior counsel appearing on behalf of the respondent-Company has raised the preliminary objection that all the petitions filed by the petitioners/drivers under Article 227 of the Constitution of India are not maintainable on the following reasons:-

(i) The order dated 10th September, 2013 was passed by the learned trial Court with the consent of the parties and the learned counsel for the petitioners (respondents therein) was present when the said order was passed.

(ii) In case, there is any grievance against the said order, the petitioners in all the cases have failed to exhaust the alternative remedy of filing of an appeal u/s 37 of the Arbitration and Conciliation Act, 1996, as the order dated 17th September, 2013 challenged by the petitioners in the present proceedings is an order passed u/s 9 of the Arbitration and Conciliation Act, 1996. The only statutory remedy is provided in Section 37 of the said Act.

(iii) Mr. Sethi further states that as far as the dispute between the parties is concerned, the Arbitrator in the matter has already been appointed and the proceedings are pending between the parties. He further states that as far as filing of the FIRs/complaints against the petitioners/drivers is concerned, the respondent has no objection that in case any proceedings are initiated for quashing of the FIRs against them is concerned, the respondent is ready to cooperate with the petitioner for quashing thereof. He further states that with regard to upfront amount or any other claim of the petitioners, the same is the subject matter of the dispute pending before the Arbitrator.

11. Learned counsel for the petitioners has not disputed the fact that the arbitration proceedings are pending and the petitioners would be making all their claims in accordance with law. The petitioners are also agreeable to file the appropriate petitions for quashing the FIRs lodged against the drivers and as agreed, the respondent may cooperate and would raise no objection for the same. The only submission of the learned counsel for the petitioners is that the petitioners have deposited some upfront amount with the respondent and other part payment, the same be ordered to be returned to the petitioners, apart from the other dispute pending before the Arbitrator.

12. Having considered the entire gamut of the matter, I am of the view that the said request of the petitioners cannot be allowed as the matter is subjudice before the Arbitrator.

Cont. Cas. (C) Nos. 798/2013, 799/2013, 800/2013, 801/2013, 802/2013 & 803/2013

13. In the pending CM(M) Nos. 982/2013, 987/2013, 998/2013, 999/2013 & 1000-1011/2013, the following orders were passed on 27th September, 2013:

These petitions were listed on 23rd September, 2013. Notice was issued to the respondent for today which was accepted by the learned counsel appearing on

behalf of the respondent who assured the Court that no coercive action would be taken by the respondent against the petitioners/drivers to take the possession of the vehicles till the next date.

Mr. Prag Chawla, learned counsel for the petitioners states that despite of the assurance given by the learned counsel, the respondent has taken the possession of the vehicles who has also taken the action against the petitioners/drivers through police who has arrested them.

The learned counsel for the respondent did not deny about the statement made in the Court, however, he states that it is the police who have taken the possession of the vehicles owned by his client on the basis of an FIR which was already registered on 21st September, 2013, i.e. before passing the order dated 23rd September, 2013. Mr. Chawla states that the factum of filing the FIR was not disclosed on 23rd September, 2013 when the matters were being heard, thus, the conduct of the respondent is not proper.

Counter-affidavit has been filed on behalf of the respondent.

List on 21st October, 2013 for further consideration.

14. When the above said contempt petitions were listed on 11th October, 2013, notice was issued to the respondents, returnable on 21st October, 2013. Directions were also issued to the respondent to maintain the status-quo with regard to the vehicles in question.

15. Replies to the contempt petitions were filed by the respondent. The following submissions were made in the reply which read as under:-

(I) The contempt petitions filed by the petitioners are abuse of the process of law as the respondents herein have not in any manner disobeyed any orders passed by this Court. The same are only an attempt on the part of the petitioners to pressurize and arm-twist the respondents into adhering to the illegitimate demands of the petitioners.

(II) It is submitted that respondent No. 1 has already filed its counter-affidavits in response to the petitions and has also filed the replies to the interim applications filed by the petitioners. The respondents refer to and reply upon the contents of the counter-affidavits and contents of the replies to the applications, for the purpose of reply to the contempt cases.

(III) It is further submitted that the vehicle in question had been handed over to the petitioner by respondent No. 1 under the Radio Taxi Operation Agreement dated 13th February, 2013 (hereinafter referred to as the "Agreement") and the petitioner was only entitled to operate the same in the manner set out in the said Agreement. The ownership of the vehicle was not in any manner transferred in favour of the petitioner, nor was the same contemplated to be transferred to the petitioner except at the discretion of respondent No. 1. The petitioner after defaulting in payment in terms of the Agreement, on being approached by the

respondent, regarding adherence of the payment terms deactivated the GPS system installed in the vehicle in question and had also subsequently stopped reporting to the office of the respondents. In the given situation, the respondents apprehending a genuine threat regarding misuse of the vehicle especially in view of the fact that the respondent No. 1 is the owner of the vehicle, The respondents having been left with no option had registered a police complaint against the petitioner at Kapashera Police Station in the month of August, 2013 itself.

(IV) In view of the default of the petitioner in adhering to the terms of the Agreement, the Agreement entered into between the petitioner and respondent No. 1 was terminated by respondent No. 1 vide termination-cum-demand notice dated 2nd September, 2013. The petitioner, however, failed to either respond to the aforementioned notice or to return the vehicle to respondent No. 1.

(V) It is submitted that the possession of the vehicle has not been taken over by any of the respondents herein and the possession has been taken over by the Police and the vehicle is lying in the possession of the police who have recovered the same from the petitioner after registration of FIR pursuant to a complaint filed by the respondent No. 1. It is further submitted that respondent No. 1 was constrained to pursue the police complaint against the petitioner as illegal use of the vehicle by the petitioner could have resulted in grave repercussions for respondent No. 1 who being the owner of the vehicle would have been held liable for the same.

(VI) It is submitted that the core dispute between the petitioner and the respondents was with respect to adherence of payment terms under the Agreement but the petitioner with malafide intentions and to acquire the vehicle in question illegally which although was never committed to the petitioner under the Agreement, absconded with the same leading to multiple litigations between the petitioner and the respondent No. 1. Hence, the respondents were constrained to take recourse to the legal remedy. However, since the petitioner, realizing that he cannot by resorting to tactics and deny the respondents of its legal right under the Agreement, is now pressurizing the respondents by filing frivolous cases as the present one and is further adding to monetary and business losses to the respondents.

(VII) The bonafide of the respondents is apparent from the fact that the petitioner despite having received order for release of the vehicle on superdari in favour of the petitioner, has not taken the possession of the vehicle from the police and the same is with the police as on date. The respondent No. 1 is the owner of the vehicle and is suffering daily losses of approx. Rs. 1270/- per vehicle due to non-user of the vehicle, however, only in order to comply with the oral observations of this Court, have not taken over the possession of the vehicle.

(VIII) It is further submitted that save and except what has been admitted expressly hereinafter, the averments and allegations made in the contempt case

under reply be deemed to have been specifically denied and controverted.

16. The respondent has given its justification that the said vehicles were seized on the basis of the complaints/FIRs already lodged with the concerned police station even before passing the status-quo order and on the basis of the said FIRs, the action was taken by the police. Nothing contrary has been placed on record by the petitioners, except the statement was made by the learned counsel for the petitioners that the status-quo order was passed in the presence of the respondent and the respondent ought to have informed the police in advance before seizing of the vehicles and arresting the drivers.

17. No doubt, the provisions of Contempt of Court Act are made to maintain the majesty and dignity of judicial system and are defined finding on the material before the Court for ordering punishment on account of disobedience of the orders of the Court which are willful. But in a case where there could be the possibility of two versions, it would not be proper to exercise this discretion which is vested in Court. In the case in hand, I do not find that a case has been made out in view of the reply filed by the respondent so as to warrant any action by the Court.

18. Notice issued in the contempt petitions is discharged and the same are accordingly disposed of.

19. As far as the main petitions and pending applications are concerned, the same are also disposed of being not maintainable, for the reason that the order dated 10th September, 2013 was passed in the presence of the petitioners and it is almost the consent order between the parties. Secondly, the petitioners have failed to exhaust the statutory remedy which is provided u/s 37 of the Arbitration and Conciliation Act, 1996. The present petitions under Article 227 of the Constitution of India are not maintainable. However, it is directed that in case, any proceedings for quashing the FIRs are initiated by the petitioners, the respondent shall provide full cooperation so that the FIRs be quashed without any further delay. No further orders are required to be passed. All the petitions and pending applications as well as the contempt petitions are disposed of accordingly. All the interim orders are also vacated.