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(2014) 09 DEL CK 0017

In the Delhi High Court

Case No : CM (M) No. 187/2011

Tata Motors Finance Ltd. APPELLANT

Vs

Laxmi Kant Tiwari RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Constitution of India, 1950 — Article 227

Citation : (2014) 09 DEL CK 0017

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Pallavi Deepika, Advocate for the Appellant

Judgement

Valmiki J. Mehta, J.—This petition under Article 227 of the Constitution of India is filed challenging the impugned order of the court below dated 7.2.2011 which has dismissed the application filed by the petitioner/defendant u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ''the Act'') .

2. The respondent/plaintiff filed the subject suit for mandatory and permanent injunction seeking the following reliefs:-

"It is, therefore, most respectfully prayed that this Court may kindly be pleased to:

(a) pass a decree of mandatory injunction in favour of the plaintiff and against the defendant, thereby directing the defendant to release the vehicle/care of the plaintiff i.e. Tata Indica car bearing registration no. DL-1Y-B-3515, forthwith.

(b) pass a decree of permanent injunction in favour of the plaintiff and against the defendant, thereby restraining the defendant, its associates, representatives, agents, employees, servants etc. from selling/auctioning/creating third party charge in the abovesaid vehicle/car of the plaintiff i.e. Tata Indica car bearing registration no. DL- 1Y-B-3515.

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(c) Award the cost of the suit in favour of the plaintiff and against the defendant.

(d) Pass any other relief(s) in favour of the plaintiff and against the defendant, which this Court may deem fit and proper under the facts and circumstances of the case as well as in the interest of justice."

3. The petitioner/defendant-company is a financer and it financed the subject vehicle i.e. Tata Indica car bearing registration no. DL-1Y-B-3515 for the respondent/plaintiff. The petitioner/defendant paid the amount of Rs. 2.75 lacs as loan and the respondent/plaintiff executed the loan agreement dated 04.02.2008 to repay the loan amount of Rs. 2.75 lacs in 36 instalments with the first instalment being for the amount of Rs. 9,401/- and the balance instalments were to be of the amounts of Rs. 9,413/-. Respondent/plaintiff defaulted in making payment of the instalments and therefore the petitioner/defendant took forcible possession of the hypothecated vehicle from the respondent/plaintiff. It is against this action of the petitioner/defendant that the subject suit came to be filed.

4. In the admitted loan agreement dated 4.2.2008, there is the following arbitration clause:-

"23. ARBITRATION All disputes, differences and/or claims arising out of this Loan Agreement or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to the held in Mumbai in accordance with the Arbitration and Conciliation Act 1996, or any statutory amendments thereof and shall be referred to a person to be appointed by the Lender. In the event of death, refusal, neglect, inability, or incapability of the person so appointed to act as an Arbitrator, the Lender may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned."

5. The aforesaid arbitration clause is comprehensive because all disputes, differences and claims arising out of the loan agreement with respect to the vehicle in question had to be referred to arbitration. Such a comprehensive clause clearly includes the disputes as to validity or otherwise of taking over by the petitioner/defendant of the hypothecated vehicle. Trial court has relied upon the judgment of Kerala High Court reported as T.M.L. Financial Services Ltd. Vs. Vinod Kumar, which held that arbitration clause will not prevent the civil right of a person who has received the loan and hypothecated the vehicle from seeking compensation and damages for illegal taking over of possession. However, I note that the present, subject suit which is filed by the respondent/plaintiff is not a suit for damages and compensation but is only against the action of alleged illegal taking over of the possession of the hypothecated vehicle and therefore the judgment in the case of M/s. TML Finance Services Ltd. (supra) is distinguishable. The subject matter of the present case therefore clearly falls within the arbitration clause.

6. The second reason for dismissing of the Section 8 application of the Act by the

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trial court was that the petitioner/defendant has only filed a certified true copy of the agreement and which according to the trial court cannot be said to be a certified copy as required in law. I have failed to understand this reasoning of the trial court because the certified true copy is very much the certified copy of the loan agreement and it cannot be held by the trial court that a certified true copy is not a certified copy of the arbitration agreement. A certified copy is used in the sense of an authenticated copy of the arbitration agreement and once authentication to be done by the relevant person who has seen the original arbitration agreement has been done on behalf of the petitioner, then, there is on record that certified copy of the arbitration clause. Hence, trial court was not justified in holding that the certified true copy of the loan agreement is not the certified copy as required by law.

7. In view of the above, the petition is allowed. Impugned order dated 7.2.2011 is set aside. Petitioner''s application u/s 8 of the Act will stand allowed. Parties are left to bear their own costs.

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