
(1989) 04 DEL CK 0019
In the Delhi High Court
Case No : Suit No. 444A of 1987

The Motor and General Finance Ltd.

APPELLANT

Vs

Hira Parsad Kesri and Another

RESPONDENT

Date of Decision : 07-04-1989

Acts Referred:

Citation : (1989) 2 ARBLR 44 : (1989) 17 DRJ 36

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : Mamta Mehra, for the Appellant;

Judgement

C.L. Chaudhry, J.

(1) The Motor & General Finance Ltd., hereinafter referred to as the petitioner has filed this petition u/s 20 of the Arbitration Act seeking permission to file the arbitration agreement in court and for reference of dispute for arbitration in terms of the arbitration agreement. It is stated in the petition that the petitioner purchased a motor vehicle bearing Engine No. 692. DOI. 1.5591 I Chassis No. 344.073.1.48433 from M/s. Tata Engineering & Locomotive Co. for Rs. 1,70,310.40. Thereafter the said vehicle was hired to respondent No. 1 under the hire purchase agreement dated 12-2-83. Respondent No. 2 has stood as guarantor for and on behalf of respondent No. 1 for due performance of the terms of the agreement. The vehicle was thereafter registered under registration No. BRZ-7636. The hire purchase agreement dated 12-2-83 was for a total sum of Rs. 2,43,610.40.00 inclusive of chassis value, hire charges and insurance charges, etc. Out of this amount respondent had paid Rs. 50,310.40 towards the initial payment by way of hire amount and the balance amount to be paid was Rs. 1,93,300.00. This was agreed to be paid in thirty-five hire Installments, eight Installment of Rs. 5,600.00 each and the remaining 27 Installments of Rs. 5,500.00 besides compensation charges for late payment and other sums falling due under the hire purchase agreement. It is further stated that the respondent defaulted in making the payment and at the time of institution of the suit, a sum

of Rs. 1,52,972.00 remained due from the respondent on account of over due hire money and other charges.

(2) Despite notice the respondent has not paid the amount. The hire purchase agreement contains arbitration clause which provides that all the disputes, differences or claims arising out of the said agreement shall be settled by arbitration and shall be referred to the sole arbitration of Shri Inderjit Singh Gulati, Advocate, and in case of his death, refusal or inability to act as an Arbitrator then to the sole arbitration of Shri Bal Kishan Jain, Advocate. It is further alleged that the disputes have arisen between the petitioner and the respondent in respect of payment of overdue hire money, compensation charges for late payment and for return of the vehicle together with damages caused to it. These disputes fall within the ambit of the arbitration clause and are liable to be referred for arbitration"

(3) Regarding respondent No. 3, it is alleged that respondent No. 1 entered into with some arrangements with respondent No. 3 without the knowledge and consent of the petitioner and in violation of the terms of hire purchase agreement. Thereafter, respondent No. 3 has been imp leaded to determine his liability qua the petitioner. He is also a necessary party as he is holding the vehicle and is plying the same. However, respondent No. 3 was given up by the counsel for the petitioner.

(4) Notice of this petition was given to the respondent. Despite service none appeared on their behalf. Despite service none appeared on their behalf. They were proceeded exparte vide order dated 29-4-1987. Evidence has been led by way of affidavit. Shri K.N. Wahal attorney of the petitioner has filed an affidavit in support of the petition. In his deposition he has supported the petition on all material particulars. It is deposed that the respondent committed breach of the hire purchase agreement and in spite of notices dated 14-2-1986 and 30-1-1987, they have not complied with the terms and conditions of the agreement. On account of the breach of the terms and conditions by the respondent the following disputes have arisen between the parties which are within the ambit of the arbitration clause:-

(I)Overdue hire money up to the date of filing of the petition u/s 20 of the Arbitration Act...Rs. 91,500.00 .

(II)Compensation charges for late payment up to the date of filing of the petition u/s 20 of the Arbitration Act... Rs. 6L472.00 .

(III)The petitioner is also entitled to the vehicle bearing No. Brz 7636 which was seized by the Receiver Sh. K.L. Narula and Shri J.L. Dbawan as they were appointed Receiver by this Hon"ble Court on 14-5-87.

(IV)Further compensation charges for late payment in terms of hire purchase agreement from the date of filing of the petition u/s 20 of the Arbitration Act till the payment are made by the respondent in terms of the agreement.

(5) I have heard the Counsel for petitioner and gone through documentary as well as oral evidence. The petitioner has placed on record a photo copy of the hire-purchase agreement dated 12-2-83. It stands proved from the deposition of Shri K.N. Wahal who deposed that it was signed by the respondent. A statement of account has also been filed. Under the hire-purchase agreement the respondent was required to pay Rs. 1,93,300.00 by way of Installments mentioned in the hire-purchase agreement. From the statement of account it appears that Rs. 1.52,972.00 is due from the respondent. The respondents have committed breach of the terms of the agreement. The disputes and differences have arisen between the parties.

(6) I have examined the arbitration clause and the disputes and differences which have arisen between the parties and referred to above. In my opinion, the disputes and differences do fall within the arbitration clause. Accordingly, the petition is allowed and the petitioner are directed to file the original arbitration agreement in court. The disputes and differences mentioned in para 4 above are referred for adjudication to the sole arbitrator Shri Inderjit Guiali, Advocate. The Arbitrator should make his award within four months from the date of entering upon the reference. The petitioner is entitled to costs of these proceedings. The petition is disposed of.