(2010) 03 DEL CK 0058

In the Delhi High Court

Case No : O.M.P. 326 of 2002

Treason Overseas Pvt. Ltd. APPELLANT

Vs

Motor and General Finance Ltd. and Others RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 21, 34, 34(2)

Citation : (2008) 147 DLT 354 : (2007) RLR 690

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Anil Kumar Sangal, Nalin Sangal and D.P. Mohanty, for the Appellant; Sunil Magon, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present petition has been filed u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act, 1996") for setting aside the ex parte arbitral Award dated 20th April, 2002.

2. The facts of present case are that on 30th June, 1997, a Hire-Purchase Agreement was executed between the petitioner-objector and respondent No. 1-claimant whereby two Ashok Leyland Comet Alco vehicles Model 1997 were financed. Mr. Sujan Singh Bundela stood as a guarantor for petitioner-objector. Under the Hire-Purchase Agreement, petitioner-objector agreed to repay a sum of Rs. 11,70,000/- in 23 monthly installments. However, after repaying only one monthly installment of Rs. 50,000/- on 07th October, 1997, petitioner-objector defaulted in repayment of outstanding amount. Accordingly, petitioner-objector incurred additional liabilities. After repossession of the two vehicles, the same were sold by the respondent No. 1-claimant.

3. Subsequently, arbitral proceedings were initiated wherein petitioner-objector after initially appearing through its counsel, did not appear. Consequently, the impugned ex parte Award dated 20th April, 2002 was passed against petitioner-

objector and its guarantor, Mr. Sujan Singh Bundela.

4. Mr. Anil Kumar Sangal, learned Counsel for petitioner-objector submits that impugned Award is contrary to public policy of India inasmuch as the respondent No. 1-claimant''s claim was barred by limitation and respondent No. 1-claimant did not reduce its claim by the amount it had recovered on resale of repossessed trucks.

5. On the other hand, Mr. Sunil Magon, learned Counsel for respondent No. 1-claimant submits that claim petition was well within limitation as the notice invoking arbitration was issued on 30th March, 2000 i.e. within a period of three years from the date of first default i.e. 01st November, 1997.

6. In the alternative, he submits that the two vehicles were repossessed by respondent No. 1-claimant through police aid on 15th July, 1999 and accordingly, respondent No. 1-claimant was at liberty to initiate arbitration proceedings within three years from the date the cause of action arose i.e. 15th July, 1999 ? which it did.

7. Mr. Magon further states that without prejudice to the rights and contention of respondent No. 1-claimant, the amount of Rs. 7 lacs received on sale of two trucks could be deducted from the awarded amount. He points out that respondent No. 1-claimant is a RBI audited company.

8. In rejoinder, Mr. Sangal disputes the date of repossession of the vehicles and states that both the vehicles were repossessed in November, 1997. According to him, it is unlikely that the vehicles were repossessed in the year, 1999 when the default in repayment has admittedly taken place in the year, 1997.

9. Mr. Sangal lastly states that in the absence of audited balance sheet of respondent No. 1-claimant company, the amount of Rs. 7 lacs alleged to have been received on sale of two trucks could not be believed as "gospel truth"

10. Having heard the parties, I am of the view that the scope of interference by this Court with an arbitral award u/s 34(2) of Act, 1996 is extremely limited. Supreme Court in Delhi Development Authority Vs. R.S. Sharma and Co., New Delhi, , after referring to a catena of judgments including Oil & Natural Gas Corporation Ltd. (supra) has held that an arbitral award is open to interference by a court u/s 34(2) of the Act, 1996 if it is contrary to either the substantive provisions of law or the contractual provisions and/or is opposed to public policy.

11. In fact, the Supreme Court in McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, has succinctly summed up the scope of interference by this Court by stating "the 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. ..."

12. It is an admitted position that petitioner-objector has defaulted in repayment

of installments under the Hire-Purchase Agreement. Today, before me, even no reason for petitioner-objector''s non appearance before the Arbitrator has been advanced. Consequently, no objection on merits of controversy can be entertained in the present proceedings.

13. Undoubtedly, the issue of limitation can be raised at any stage of the proceedings including in an objection petition filed u/s 34 of Act, 1996. However, on a perusal of the papers, I find that respondent No. 1-claimant has commenced the arbitral proceedings within a period of three years from the date the cause of action arose. Even if the cause of action is taken as the first date of default as suggested by learned Counsel for petitioner-objector, namely, 1st November, 1997, I find that the respondent No. 1-claimant had issued a legal notice dated 30th March, 2000, that is within the period of three years. I may mention that in accordance with Section 21 of Act, 1996, the arbitral proceedings are deemed to commence on the date on which a request for the dispute to be referred to the arbitration is received by the other party.

14. In any event, I am of the opinion that the issue of limitation is a mixed question of fact and law and the petitioner-objector has not pleaded vital facts like the date of repossession of the vehicles either before the Arbitrator or before this Court. Accordingly, I have no other option but to believe the respondent No. 1-claimant''s version that trucks were repossessed on 15th July, 1999. I may mention that during the hearing, learned Counsel for respondent No. 1-claimant had handed over a receipt/letter dated 15th July, 1999 written by respondent No. 1-claimant to Inspector, Police Station Kotwali Chanderi, Guna, Madhya Pradesh admitting that it had received possession of two Ashok Leyland vehicles. The said letter is countersigned by the guarantor to the said transaction and bears the same date. Consequently, it is impossible for this Court in the present proceedings to give a finding that the claim petition filed by respondent No. 1-claimant was beyond the period of limitation.

15. As far as the plea that respondent No. 1-claimant has not placed on record anything to show as to how much amount it received on sale of the two Ashok Leyland Comet vehicles is concerned, I am of the view that this argument has been raised for the first time by petitioner-objector on 28th January, 2009. Even in accordance with the Income Tax Act, no individual or company is to retain its audited balance sheet for the period exceeding seven years. Since sale in the present case pertains to the year 1999 and arbitral award in the present case was rendered on 20th April, 2002, I am of the view that petitioner-objector cannot insist on production of audited balance sheet to show the amount received by respondent No. 1-claimant on sale of two repossessed trucks. However, in the interest of justice, the awarded amount by the Arbitrator is reduced by the sale price of Rs. 7 lacs. With this modification, the objection petition is dismissed but with no order as to costs.

