

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5405 of 2011

Date of decision : July 25, 2013

Inam

....Petitioner

versus

Shri Ram City Union Finance Ltd.

....Respondent

Coram: Hon'ble Mr. Justice L.N. Mittal

Present : Mr. Adarsh Jain, Advocate, for the petitioner

None for the respondent

L.N. Mittal, J. (Oral)

Plaintiff Inam has invoked the jurisdiction of this Court under Article 227 of the Constitution of India by filing the instant revision petition to assail order dated 27.7.2011 passed by the trial court thereby allowing application Annexure P/2 filed by filed by defendant-respondent under section 8 of the Arbitration and Conciliation Act, 1996 (in short, the Act).

Petitioner has filed suit against the respondent for permanent injunction vide plaint Annexure P1 alleging inter alia that the petitioner purchased truck which was financed by the respondent. Petitioner has been

repaying the loan installments regularly but defendant wanted to take forcible possession of the truck. Petitioner sought permanent injunction restraining the defendant from doing so.

Defendant filed application Annexure P/2 under section 8 of the Act alleging that in view of arbitration clause contained in hire purchase agreement, dispute between the parties is liable to be referred to Arbitrator.

Petitioner-plaintiff by filing reply Annexure P/3 denied the arbitration agreement between the parties.

Learned trial court vide impugned order dated 27.7.2011 has allowed the application filed by respondent-defendant under section 8 of the Act. Feeling aggrieved, plaintiff has filed the instant revision petition to challenge the said order.

I have heard counsel for the petitioner and perused the case file whereas none has appeared for the respondent inspite of last opportunity granted for today although case was even passed over once.

Counsel for the petitioner contended that the petitioner in his reply Annexure P/3 has denied execution of arbitration agreement and therefore, application under section 8 of the Act could not be allowed. Reference was also made to application Annexure P/4 filed by the plaintiff for directing the defendant-respondent to produce original loan agreement of the truck.

I have carefully considered the matter. The petitioner in his reply Annexure P/3 to application Annexure P/2 has not denied the existence and execution of hire purchase agreement/loan agreement. The petitioner in his reply Annexure P/3 has cleverly denied the execution of arbitration agreement. However, there is no separate arbitration agreement between the parties. Arbitration clause is admittedly contained in hire purchase agreement/loan agreement, existence and execution whereof has not been denied by the petitioner. On the contrary, the petitioner by moving application Annexure P/4 sought production of the original loan agreement. Thus execution of the loan agreement/hire purchase agreement stands admitted by the plaintiff-petitioner. Attested photostat copy thereof had already been produced on the file. Counsel for the petitioner has conceded that the said agreement contains arbitration clause. Since there is arbitration clause in the agreement executed between the parties, application under section 8 of the Act filed by the defendant has been rightly allowed by the trial court.

Counsel for the petitioner also contended that the respondent-defendant filed application under section 8 of the Act after seeking an adjournment for filing written statement to the plaint. However, according to section 8 of the Act, if the application is filed before filing the written statement, then the dispute has to be referred to arbitration. In the instant

case, admittedly application Annexure P/2 under section 8 of the Act was filed by defendant-respondent before filing its written statement. Consequently, the said application comes within purview of section 8 of the Act and is not debarred.

For the reasons aforesaid, I find no perversity, illegality or jurisdictional error in impugned order of the trial court so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The revision petition lacks any merit and is accordingly dismissed.

July 25, 2013

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(L.N. Mittal)
Judge