

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(107)

**CR No.3250 of 2015 (O&M)
Decided on: August 06, 2015.**

Citi Corp Finance (India) Ltd. and another

.... Petitioners

Versus

Gurpreet Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Munish Goel, Advocate,
for the petitioners.

M.M.S. BEDI, J (ORAL)

Defendants have preferred this revision petition against the order dated 07.03.2015, dismissing the application of the defendant-petitioners under Order 7 Rule 11 CPC read with Section 151 CPC and Section 8 of Arbitration and Conciliation Act for dismissal of the suit. The trial Court has observed that in view of Clause 14 of the agreement dated 05.04.2002, the jurisdiction of the Civil Court is not barred by law as such application under Order 7 Rule 11 CPC was not maintainable.

Learned counsel for the petitioners submits that the rights of the parties are governed by an arbitration clause in an agreement dated 05.04.2002 which is Loan-cum-Hypothication agreement of the vehicle.

With the assistance of the learned counsel for the petitioners, I have gone through the contents of the plaint.

The claim of the plaintiff-respondent in the suit is that he had got financed a truck after obtaining a loan of Rs.7,75,000/-. The plaintiff was required to repay the loan amount along with flat interest total

Rs.9,90,683/- in 41 equated installments of Rs.24,163/-. The plaintiff could not pay one of the installment in time resulting in recalling and impounding of the vehicle. The plaintiff was allegedly compelled to clear the entire dues by the defendant-petitioners as such they were successful in recovering the same from the plaintiff in 22nd installment. The defendant-petitioners had calculated the interest of the loan amount of 41 months commencing from 05.04.2002 to 05.09.2005 but the amount was illegally recovered in toto along with interest on 17.03.2004 and no dues certificate was issued in favour of the plaintiff. Claiming that the defendants have illegally recovered the amount of interest, the plaintiff-respondent sought a decree for recovery of Rs. 1,02,344/- on excess amount received by the defendants from the plaintiff.

Learned counsel for the defendant-petitioners submits that though no dues certificate had been issued by the defendants yet the arbitration clause would remain operative as such the trial Court ought to have allowed application under Section 8 of the Arbitration and Conciliation Act and dismissed the suit under Order 7 Rule 11 CPC and referred the matter to the Arbitrator as agreed to between the parties.

Learned counsel for the petitioners relying upon **National Insurance Co. Ltd Vs. M/s Boghara Polyfab Pvt. Ltd., 2009 (1) RCR (Civil) 109**, has contended that when there is a contract between the parties containing an arbitration clause to refer the dispute to the arbitration, the arbitration clause can be invoked even if the contract is discharged on account of performance.

I have heard learned counsel for the petitioners and carefully gone through the terms of the agreement of loan which no doubt contain an

arbitration clause that all disputes, differences, claims and questions whatsoever which shall arise either during the subsistence of this agreement or afterwards between the parties or their respective representatives touching any clauses or thing herein contained would be referred to the sole arbitration of Mr. S.K. Jain.

It is an admitted fact that no dues certificate had been issued by the defendants on plaintiff-respondent having paid the entire amount taken of loan by him. It will be a debatable issue at the time of final adjudication of the suit whether the plaintiff-respondent would be entitled to claim the excess amount paid after obtaining no dues certificate. In this context, a reference can be made to *Union of India and others Vs. Hari Singh, 2011 (1) R.C.R (Civil) 134* wherein it was observed that when there is an agreement between the parties containing an arbitration clause and parties by supplementary agreement obtained a full and final discharge after paying the entire amount which was due, the party will not be justified invoked the arbitration clause as there would be no arbitral dispute to be referred to the arbitration. Reliance was placed on 2009 (1) RCR (Civil) 109 in the said case.

In the present case, the parties to the contract will mutual agreement had absolved each other from the performance of respective obligations when no dues certificate was issued to the plaintiff-respondent. Whether in such situation the sole arbitrator named in the agreement could be entrusted with the arbitration will depend upon the evidence to be produced as to whether the obligation under the contract stood fully discharged by issuance of no dues certificate. Moreover the defendant-petitioners have not moved any application till date under Section 8 (3) of

the Arbitration and Conciliation Act, 1996 for commencing the arbitration proceedings. Application under Order 7 Rule 11 CPC read with Section 8 of the Arbitration and Conciliation Act has rightly been dismissed by the trial Court as the parties have already led evidence and the case is at penultimate stage.

No ground is made out for interference in the impugned order.

Dismissed without prejudice to the right of the defendant-petitioners to seek enforcement of the rights of the defendants as per procedure of law if so advised.

(M.M.S. BEDI)
JUDGE

August 06, 2015
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