

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

Civil Revision No.3547 of 2012 (O&M)

Date of decision: 19.05.2015

Shri Ram Transport Finance Company Limited ... Petitioner

versus

Dinesh Bansal Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S. Sandhu, Advocate,
for the petitioner.

Mr. Harish Sharma, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

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K.Kannan, J. (Oral)

1. In a suit for mandatory injunction by a person who has availed to himself a purchase through a hire purchase agreement, the defendant-financier has relied on the terms of hire purchase agreement that provides for an arbitral reference for settling disputes between parties by applying under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, the Act). The court has dismissed the application on the ground that the hire purchase agreement is a distinct transaction which has no relevance to the reliefs claimed in

suit and that further it is claimed by the plaintiff that the defendant had been guilty of breach of terms of the agreement and, therefore, a clause in the agreement cannot be relied on.

2. I would find the reasoning of the court below to be erroneous and untenable in law. The arbitral agreement referred to under Section 7 of the Act includes any term of a contract that contains an arbitral reference. There need not have been a separate document spelling out the arbitral clause other than in hire purchase agreement document itself. Further the plaintiff who seeks for mandatory relief gets right to possess the vehicle only under the hire purchase document and the mandatory relief itself could not have been asked for unless the plaintiff was in effect seeking for enforcement of the terms of the hire purchase agreement. It is irrelevant that the plaintiff claims that the terms of hire purchase agreement are breached by the respondent. The alleged breach by the defendant may give rise to the plaintiff to seek for appropriate reliefs under the agreement itself and not *de hors* the same. In such an eventuality, a term of arbitral reference in hire purchase agreement could well be relied on by the defendant himself and seek for a reference in the manner provided under Section 8 of the Act. The further proceedings to the suit could not have been carried through particularly in the light of the admitted position that the plaintiff came by possession of the second hand vehicle only under

the hire purchase agreement which admittedly contains an arbitration clause.

3. The order passed is set aside and the application for reference to arbitration under Section 8 of the Act is allowed. The parties may resort to a reference of arbitration in the manner contemplated under the document and have the adjudication made for the reliefs claimed in the suit through such an arbitral reference.

4. The order impugned is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

19.05.2015
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