

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9883 OF 2013

1. Shriram Transport Finance Co. Ltd.,
Through its Branch Manager,
Branch at IIrd floor, Jaya Chambers,
Jankinagar, Near Hanumangad,
Nanded.
2. Shriram Transport Finance Co. Ltd.,
Through its Branch Manager,
Branch at Bengali Camp Road,
Chandrapur.
3. Shrirampur Transport Finance Co. Ltd.,
Through administrator offices
s/a Administrative Office,
101-105, Shiv Chambers, B-Wing,
Sector-11 CBD Belapur,
Navi Mumbai. ... Petitioners

Vs.

Satpalsingh Tejasingh Chaddha,
Age 55 years, Occ - Business,
At present Chaddha Complex,
Bhagatsingh Road, Nanded. ... Respondent

Mr. Ruchir S. Wani, h/f. A.S. Bajaj Advocate for the petitioners.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 12-07-2016.

ORAL JUDGMENT :

1. Despite service, no appearance has been caused on behalf of the respondent. Rule. Rule made returnable forthwith and heard finally.

2. The petitioners points out agreements titled 'loan cum hypothecation agreement' dated 17-04-2006 and 19-03-2010 financing two vehicles to the respondent. Subsequently as the terms and conditions of the agreements were not being kept up by the respondent, it appears that some action for taking over possession of the vehicles had been mooted. Against the contemplated action, it appears that regular civil suit no. 513 of 2012 had been instituted by present respondent-the plaintiff seeking perpetual injunction restraining the present petitioner-defendant from taking possession of the concerned trucks/vehicles.

3. Learned counsel for the petitioners Mr. Ruchir Wani vehemently submits that when there are documents on record, certified copies of which have been placed before the court, it was incumbent having regard to the terms of the agreement particularly clause no.15 thereof, which specifically refers to that dispute, if any, shall be settled by arbitration. Learned counsel goes on to submit that the learned judge has erroneously observed that since plaintiff has contended that the signatures have been obtained on blank forms and therefore the same would not tantamount to execution. He submits that in the present case there is not only one but there are two similar agreements in respect of the two vehicles.

4. He submits that had it not really been executed as

contended by the plaintiff, the second agreement would not have been signed by the respondent. He further submits that, the learned judge for the reasons which are not germane has refused to accede to the request made under exhibit-19 by present petitioner pursuant to section 8 of the Arbitration and Conciliation Act, 1996.

5. Perusal of section 8 which shows that a dispute is required to be referred to arbitration by the civil court when the subject of dispute is covered by arbitration agreement, section 8 reads as under:

8. Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

6. The application exhibit-19 appears to have been as per the requirements of section 8, a duly certified copy thereof has been produced on record, all the conditions under section 8, according to learned counsel stand satisfied in the present matter.

Moreover, learned counsel has pointed out that despite the application exhibit-19 being filed, plaintiff-respondent has not attended to the hearing of the application, although a say has been filed objecting to the application mentioning that the original agreement is not placed on record while the other condition is satisfied about production of certified copy.

7. During the course of the hearing learned counsel for the petitioner also refers to relies on a decision of Hon'ble Single Judge of this court dated 10-10-2013 in writ petition no. 3343 of 2013, which according to him deals with largely a similar situation.

8. Learned counsel further has taken this court to section 16 of the Arbitration and Conciliation Act, 1996, particularly, sub-sections (1) thereof which reads as under:

16. Competence of arbitral tribunal to rule on its jurisdiction.- (1) *The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-*

(a) *an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*

(b) *a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*

9. Taking into account aforesaid provision, existence and/or validity of the agreement to refer the dispute to arbitration also appears to be a matter, which an arbitrator may be able to consider and deal with, as such while it has been reasoned by

learned judge refusing to accede to the request to send the dispute to arbitration, aforesaid provision may not have been noticed. It appears from the reason given in the impugned order that the learned judge has been swayed away by consideration that, in view of the contention on behalf of the respondents asserting that signatures had been obtained on blank papers would suggest that there is no existence of agreement for arbitration. However, even such a question as would plainly appear from aforesaid provision may be within the scope of arbitration proceedings.

10. Having regard to aforesaid, the impugned order appears to have been passed on a very tenuous thread of the plaintiffs pleading that the signature have been obtained on blank papers would not be sufficient in the present case, to make impugned order sustainable, particularly, having regard to section 16(1) of the Arbitration and Conciliation Act, 1996 and in the absence of any resistance to the request in the writ petition, the petition deserves to be allowed for non traversing and non-controverting averments.

10. In the circumstances, the petition is allowed. Rule is made absolute in terms of prayer clause (B).

(SUNIL P. DESHMUKH)
JUDGE