IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No. 1066 of 2016
Date of decision :09.05.2016

Dyal Singh

...... Petitioner

Versus

M/s Religare Fine Vest Ltd. And another

........Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.L.Sharma, Advocate
for the petitioner.

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1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

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DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 01.12.2015, passed by the learned Additional District Judge, Ludhiana, vide which the appeal filed by the petitioner-plaintiff against the order dated 17.03.2015 passed by the learned Civil Judge (Junior Division), Ludhiana for return of plaint to the petitioner under Order 7 Rule 10 (2) of the Code of Civil Procedure (for short 'CPC') has been dismissed.

2. The petitioner-plaintiff has filed the suit for decree of declaration to the effect that changing the rate of interest

more than the contractual rate of interest, processing fees and insurance amount has been charged by the respondents illegally from the loan amount of the plaintiff, which are illegal, null and void, capricious, wanton and not binding on the rights of the plaintiff. In the consequential relief, he has sought the grant of mandatory injunction directing the defendants to adjust the amount of interest, which have been received from the plaintiff more than the contractual rate along with insurance amount and to render the accounts after adjusting the amount, which they have illegally deducted from the loan amount. A decree for permanent injunction was also sought restraining the respondents-defendants to sell or alienate or make any interference in the peaceful possession of the plaintiff over the House No. 19, Aggar Nagar, South End, Ludhiana. This dispute has arisen out of the loan advanced by the defendants-respondents to the plaintiff.

3. The respondents moved the application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act') referring the matter to the arbitrator. Said application was allowed by learned trial Court and plaint was ordered to be returned vide impugned order dated 17.03.2015. The appeal has also been dismissed by the learned Additional District Judge, Ludhiana vide impugned order dated 01.12.2015. Hence this revision.

4. Learned counsel for the petitioner contended that

the respondents have fraudulently changed the contractual rate of interest. They have also fraudulently deducted the fees for processing the file and insurance amount. Thus, he contended that as the fraud has been played by the defendants-respondents with the petitioner-plaintiff and thereby indulged in serious malpractice. Such situation can only be settled/decided by the Civil Court after recording the detailed evidence of both the parties. Thus, he contended that such matter cannot be referred to the Arbitrator. To support his contentions, he relied upon case **N.Radhakrishnan Vs. M/s Maestro Engineers & Ors. 2010(3) R.C.R (Civil) 445.** Thus, he contended that the impugned order passed by the learned Court below to return the plaint is illegal.

5. I have duly considered the aforesaid contentions.

6. The sole plea raised by the learned for the petitioner is that the fraud has been played by the respondents and as the suit is based on plea of fraud, which can only be adjudicated upon on appreciation of detailed evidence to be recorded by the Court, the matter could not have been referred to the Arbitrator. But, the aforesaid contentions are without any substance. Annexure P-1 is the copy of the plaint filed by the petitioner. In the entire plaint, no plea of fraud has been raised. The petitioner-plaintiff has only alleged that the rate of interest has been changed from 14 % per annum to higher rate, which is illegal, wrong, arbitrary and malafide.

The processing fees has also been wrongly charged. Rs.5000/- have been wrongly deducted towards insurance. These are the allegations mentioned in the plaint. The plaintiff-petitioner has nowhere pleaded that any fraud has been played by the respondent-petitioner with him. Thus, the plea of fraud is completely missing from the plaint. Consequently, **N.Radhakrishnan's case (Supra)** relied upon by learned counsel for the petitioner has no application to the facts of the case.

7. It is an admitted case of the petitioner-plaintiff that he has taken loan from the respondents-defendants vide loan agreement no. XMORLUD00026504. The execution of the said loan agreement between the parties on 27.06.2011 is not disputed. It is also not disputed that the said agreement contains the Arbitration Clause No.10, which provides that all the disputes, claims, differences arising out of or in connection with the said loan agreement and the Schedule(s) of terms/repayment schedule attached thereto or the performance of that agreement shall be settled by Arbitration to be referred to sole Arbitrator to be appointed by the respondents and the award thereupon shall be binding upon the parties to the agreement. So, there was a specific Arbitration Clause in the loan agreement executed between the parties.

8. Section 8 of the Arbitration Act 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.

9. The aforesaid provisions provides that where an action is brought in a matter which is subject of an arbitration agreement, the judicial authority before which that action has brought shall refer the parties to arbitration, if any of the party so applies not later then submitting his first statement on the substance of the dispute. The Hon'ble Apex Court in case **Hindustan Petroleum Corpn. Ltd. Vs. M/s Pinkcity Midway Petroleums 2003(3) R.C.R (Civil) 686** has laid down that once it is admitted/established that there is an Arbitration Clause in the agreement in view of the mandatory language of Section 8 of the Arbitration Act, the Court is bound to refer the dispute to the Arbitrator. The same ratio of law has been reiterated in cases **M/s Enco Engineers Combine Pvt. Ltd. Vs. M/s Bhupindera Steel (P) Ltd. 2011(2) R.C.R (Civil) 401** and **M/s Magma Leasing Limited Vs. Inder Pal 2010(5) R.C.R (Civil) 322** by this Court. The

pleas raised by the plaintiff-petitioner that the rate of interest has been wrongly changed/enhanced, the process fees has been wrongly charged and the amount of insurance has been wrongly deducted, are the matters which can be raised before the Arbitrator and the Arbitrator has jurisdiction to adjudicate upon his own jurisdiction, validity and existence of Arbitration agreement and also the scope of the Arbitration Clause with respect to the subject matter.

10. Thus, in view of the presence of the Arbitration Clause in the loan agreement between the parties, I do not find any illegality in the impugned orders.

11. Consequently, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

09.05.2016

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