

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 3272 of 2013

Shriram Transport Finance Co. Ltd.
3rd Floor, Jaya Chambers
(Ujwal Enterprises), Janakinagar,
Near Hanumangad, Hingoli Road,
Nanded - 631 605.

.. Petitioner.

Versus

Yahiya Khan s/o. Ahmedullah Khan,
Aged 40 years, Occupation Business,
R/o Labour Colony, Nanded.

.. Respondent.

Shri. Anil S. Bajaj, Advocate, for petitioner.

Shri. G.R. Syed, Advocate, for respondent.

Coram: T.V. NALAWADE, J.

Date: 7 July 2017.

ORAL JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both sides by consent for final disposal.

2) The present petition is filed to challenge the order made on Exhibit 15 in Regular Civil Suit No.525 of 2011 by the Civil Judge, Junior Division, Nanded. The

application was filed under section 8 of the Arbitration and Conciliation Act, 1996 for referring the dispute to the Arbitrator in view of arbitration clause in the agreement between parties. It appears that present petitioner, finance company, has given hypothecation loan to respondent for purchasing of a truck. As the respondent is defaulter, further actions are taken like attachment etc. of the truck by the finance company. Due to this action of the finance company the suit is filed by the respondent for relief of injunction to prevent the finance company from seizing, attaching the truck without following due procedure established by law.

3) Copy of the agreement was produced before the trial Court and the agreement shows that the parties have agreed to refer the dispute to arbitrator. Clause 15 of the agreement reads as under :

"15. Arbitration : All disputes, differences and/or claims arising out of these presents or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in Latur in accordance with the provision of the Arbitration and

Conciliation Act, 1996 or any statutory amendments thereof or any statute enacted for replacement thereof and shall be referred to the sole arbitration of a person to be nominated/appointed by Shriram. In the event of death, refusal, neglect, inability or incapability of the person so appointed to act as an arbitrator, Shriram may appoint a new arbitrator. The award including the interim award/s of the arbitrator shall be final and binding on all parties concerned. The arbitrator may lay down from time to time the procedure to be followed by him in conducting arbitration proceeding and shall conduct arbitration proceedings in such manner as he considers appropriate. Any proceeding to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court at Nanded only."

4) Surprisingly the trial Court has considered the cases of the Apex Court like **AIR 1969 SC 78 (Dhulabhai v. State of MP)** and **AIR 1997 SC 533 (M/s Fair Air Engineers Pvt. Ltd. vs. N.K. Modi)** and has held that the relief which is claimed by the plaintiff, present respondent, can be considered by Civil Court.

5) The nature of the agreement and the right which the finance company was exercising show that entire matter will come under the arbitration clause. If there is any grievance to the respondent that necessary procedure is not followed, then there is provision of

section 9 of the Arbitration and Conciliation Act, 1996 for getting relief from the Court mentioned in the Act, 1996. Such relief cannot be considered by Civil Court while exercising ordinary civil jurisdiction when there is special statute. In view of the arbitration clause the trial Court ought to have passed order as sought by the finance company. This Court holds that interference is necessary in the order made by the trial Court.

6) In the result, the petition is allowed. The order made on Exhibit 15 is quashed and set aside. The application Exhibit 15 is allowed. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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