THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION Nos.2881 and 2882 of 2017

COMMON JUDGMENT: ***(Per VRS,J)***

Aggrieved by the orders passed by the civil Court allowing the applications under Section 8 of the Arbitration and Conciliation Act, 1996, the plaintiff in two suits has come up with the above revision petitions.

2. Heard Mr. N. Jayasree Dilip, learned counsel for the petitioner/plaintiff.

3. Admittedly, the case is one of financing of the purchase of vehicles. Under two loan agreements, the petitioner availed loans for the purchase of vehicles. Admittedly, the loan agreements contained a clause for reference of all the disputes to arbitration.

4. However, the petitioner filed two suits in O.S.Nos.130 and 125 of 2017 respectively for rendition of accounts and for an injunction restraining the respondent-Bank from seizing the vehicle bearing No.AP 29V 5588. Immediately after entering appearance, the respondent-Bank filed I.A.No.93 of 2017 in O.S.No.130 of 2017 and I.A.No.106 of 2017 in O.S.No.125 of 2017 under Section 8. Since the existence of the loan agreements and since the existence of an arbitration clause in the agreements, are not disputed, the trial Court

had no alternative, except to allow the applications under Section 8. Aggrieved by those orders, the plaintiff in the suits is before us.

5. The contentions of the learned counsel for the petitioner are (1) that on the vehicles, a second charge has been created by the petitioner/plaintiff and, hence, third party rights, which have arisen subsequently, cannot become the subject matter of arbitration, and (2) that when the parties are in agreement about the liability, there cannot be a reference to arbitration.

6. We have considered both the above contentions.

7. The first contention that the petitioner created a second charge and that, therefore, the arbitration clause stood defeated, is to be stated only to be rejected. Once a person has created a charge on a movable property, for the purchase of which he secured finance, he is not entitled to create a second charge without the consent of the lender. The agreement that a borrower has with the lender cannot be defeated by a unilateral act on the part of the borrower. Therefore, the first contention is rejected.

8. Insofar as the second contention is concerned, the learned counsel for the petitioner relies upon a decision of a single Judge of the Delhi High Court in ***Maruti Udyog Limited Vs. Mahalaxmi Motors Limited***. In the said case, the Delhi High Court held that when there was an admitted liability between the parties, the

arbitration clause cannot be invoked. But, we do not think that the said decision reflects the correct position in law.

9. By the very fact that the petitioner went to the civil Court asking for some reliefs, it is clear that he is not admitting anything. Therefore, the question of defeating the arbitration clause on the dubious plea that the petitioner admitted his liability, does not arise. Hence, we find no merits in the revisions. Therefore, the Civil Revision Petitions are dismissed.

Consequently, miscellaneous petitions if any pending in the revisions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

N. BALAYOGI , J

23rd June, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION Nos.2881 & 2882 of 2017

(dismissed)

23rd June, 2017

cbs

*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE SRI JUSTICE N. BALAYOGI

+C.R.P.Nos. 2881 and 2882 of 2017

% 23-06-2017

Raju Vemula .. Petitioner

Vs.

$ Indus Ind Bank, Hyderabad .. Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Mr. N. Jayasree Dilip

^ Counsel for respondent : None

? CASES REFERRED : ----