

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

CR No.893 of 2015

Date of Decision: 08.08.2017

Mahindra and Mahindra Financial Services Ltd.Petitioner

Vs.

Prem Singh

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Nitin Thatai, Advocate, for the petitioner.

RITU BAHRI, J. (ORAL)

The present revision petition has been filed under Section 227 of the Constitution of India for quashing of impugned order dated 06.01.2015 (Annexure P-8) passed by learned Civil Judge (Sr.Divn.), Amritsar whereby application filed by the petitioner company under Section 8 of the Arbitration and Conciliation Act had been dismissed.

Learned counsel for the petitioner submits that Award between the parties has been passed on 08.12.2011 (Annexure P-4). The respondent had taken a loan for purchase of a vehicle FORD IKON 1.8ZXI car. The total agreement value was Rs.6,82,200/- which included the loan amount of Rs.4,95,000/- and financial charges to the tune of Rs.1,87,200/- & the entire loan amount alongwith interest was to be re-paid upto 02.04.2010 in 60 instalments. Respondent was well aware of the facts of the loan agreement. It is pertinent to mentioned that respondent after availing the loan facility from the petitioner/Company defaulted in payment of installments which were due for payment from time to time and out of the total agreement

value, the respondent only paid Rs.22,740/- As per terms of the agreement, the matter was referred to the Arbitrator under Clause 29 of the said agreement (Annexure P-2) dated 02.05.2005. The notice was served upon the respondent and he was proceeded ex-parte and thereafter an Award was passed in favour of the petitioner for recovery of an amount of Rs.14,61,707/- from the respondent, was passed. Now, the respondent had filed civil suit (Annexure P-5) for mandatory injunction and the application filed by the petitioner company under Section 8 of the Arbitration and Conciliation Act has been dismissed.

In the present case, notice of motion was issued and after service, the respondent did not put in appearance. After serving by affixation, the case was proceeded for arguments vide order dated 18.01.2016 as the service was deemed to be sufficient. The respondent is not even present on today, as such, he is also proceeded against ex-parte.

The respondent only in order to harass and humiliate the petitioner/company filed a counter blast in the form of a civil suit for mandatory injunction before the Civil Judge, Amritsar (Annexure P-5). Otherwise, he should have been availed the proper remedy under Section 34 of the Arbitration and Conciliation Act, 1996 against the arbitral Award passed against him.

Learned counsel for the petitioner has referred to the an order passed by the Co-ordinate Bench of this Court in Civil Revision No.4756 of 2013 dated 18.11.2013, whereby similar facts had been communicated to the party and received by him on 01.06.2012. In this case, the petitioner had moved an application under Section 8 of the Arbitration and Conciliation

dismissal of the suit. The Court had dismissed the application on the ground that the name and designation of the Arbitrator had not been set forth. The petitioner points that the Arbitrator had actually even passed the award and there cannot be a continuation of the suit. Thereafter, revision petition was allowed and the suit was ordered to be dismissed as not competent. As per judgment (Annexure P-9), the suit of the respondent (Annexure P-5) is not maintainable as proper remedy was Section 34 of the Arbitration Act, before the Civil Court.

In view of the above, the present revision is allowed and the order passed by the court below is erroneous and it is set aside. The suit (Annexure P-5) is ordered to be dismissed as not competent.

(RITU BAHRI)
JUDGE

08.08.2017

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No