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

214 **CR-3311-2014**

Date of Decision:27.03.2018

Sanjay Kaushik and another .....Petitioners

Versus

**Mahindra & Mahindra Financial
Services Limited .....Respondents**

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Bhupander Ghanghas, Advocate,
for the petitioners.**

**Mr. Nitin Thatai, Advocate,
for the respondent.**

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HARI PAL VERMA, J.(Oral)

Petitioners have filed the present revision petition under Article 227 of the Constitution of India, for setting aside the order dated 25.02.2014 passed by learned Additional District Judge, Bhiwani, whereby the objections filed by the petitioners in the execution petition were dismissed.

Briefly stated, the petitioners have approached the respondent-decree holder for the grant of credit facilities so as to purchase Mahindra Bolero SLX 2WD for which the respondent agreed, on the laid down terms & conditions. Accordingly, the respondent sanctioned credit facility of Rs.4 lac to the petitioners. Petitioner No.1 was the borrower whereas the petitioner No.2 was the guarantor in the case. As per terms & conditions of the credit facility, a clause was incorporated in the agreement that any dispute/differences and/or claims and questions, whatsoever arising between the parties, the same would be settled through the arbitration proceedings only.

On 16.02.2010, the Bolero vehicle met with an accident and accordingly, FIR No.74 dated 16.02.2010 under Sections 279 and 337 IPC was registered at Police Station Sadar, Bhiwani and the vehicle bearing registration No.HR-38G-0920 for which the credit facility was extended by the respondent was completely damaged. Since as per the agreement there was an arbitration clause between the parties, the matter was referred to the Arbitrator and accordingly, the Arbitrator passed the award dated 04.02.2012. The sole Arbitrator has passed the award directing the petitioners to hand over the vehicle to the claimant respondent-Mahindra & Mahindra Financial Services Limited in case the same is still in possession of the petitioners. The relevant para of the award reads as under:-

> *"(A) That, the respondents shall pay jointly and severally to the claimant a sum of Rs.4,67,933/- with further interest @ 18% p.a. from 02.11.11 on the said amount of Rs.4,67,933/- till the payment is received or recovered.*
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> *(B) The respondent No.1 is directed to hand over the vehicle/machine to the claimant in case the same is still in possession of respondents No.1. In the alternative if, the claimant has already repossessed the vehicle and the claimant is at liberty to dispose off the same after giving due notice to the respondents and the sale processed be there after adjusted in the Awarded amount. The claimant is further directed to deduct the amount from the Award amount, if any, paid by the respondent during the arbitration proceeding i.e. from the date of commencement till the date of Award.*
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> *(C) That, the lenders/Claimants are also entitled to recover from the respondents a cost of Rs.10,000/- which is Awarded for/toward all costs and expenses which may be*

borne or incurred by the claimant as the costs/expenses of Arbitral Proceeding."

Pursuant to the award dated 04.02.2012, respondent-Mahindra & Mahindra Financial Services Limited has filed the execution petition before the learned Additional District Judge, Bhiwani. In the said execution petition, the petitioners have filed the objections. It has been argued that the vehicle in question was completely damaged and from the date of accident, the said vehicle is parked in the premises of respondent-Mahindra & Mahindra Financial Services Limited and as the Company has assessed the vehicle in the total loss, therefore, the same could not be repaired.

The learned executing court had dismissed the objections with the observations that in case the vehicle was 100% damaged in the accident, then the objectors could recover the said amount from the insurance company and they cannot shift the burden upon the decree-holder. Interestingly, the award of the Arbitrator has not been challenged before any other court.

Learned counsel for the respondent has argued that once the award has been passed by the Arbitrator and the same has not been challenged before the appropriate forum, the award has acquired a stage of a decree and is liable to be executed in the manner in which it has been executed. He has further argued that for the same set of relief, the petitioners have filed civil suit No.372 and the said suit has been dismissed by learned Civil Judge (Jr. Divn.) Bhiwani, vide judgment dated 14.07.2016. Similarly, the petitioners have filed a complaint before the District Consumer Disputes Redressal Forum, Bhiwani, and the said complaint has also been dismissed by learned District Forum on 15.03.2017.

Having heard ld. counsels for the parties, this Courts finds that when the controversy in question has already been settled by different Forums and when the Arbitrator has passed the award and the same has not been challenged or upset by any higher Forum, it has acquired to have the status of a decree which is liable to be executed. Thus objections have rightly been dismissed by the executing court.

Therefore, this Court does not find any merit in the instant revision petition and the same is hereby dismissed.

March 27, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No