IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7500 of 2017(O&M)
Date of Decision: 21.11.2018

Shekhar Chawla **...** Petitioner

Vs

Tata Capital Ltd. and others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Pushpinder Kaushal, Advocate
for the petitioner.

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RAJ MOHAN SINGH, J. (ORAL)

[1]. At the very outset, learned counsel for the petitioner submitted that respondent No.1 is the only contesting respondent and service qua respondents No.2 and 3 be dispensed with. Ordered accordingly. Respondent No.1 has already been served through clerk.

[2]. Petitioner has assailed the order dated 10.07.2017 passed by Civil Judge (Senior Division), Chandigarh whereby application filed by respondents No.1 and 2 under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to arbitration was allowed.

[3]. Plaintiff/petitioner filed a suit for recovery of Rs.1,56,184/- against the defendants/respondents along with interest @ 12% per annum from the date of deposit i.e.

26.03.2009 till filing of the suit along with future interest @ 12% per annum from the date of filing of the suit till final realisation of the amount.

[4]. In the pleadings, the plaintiff has pleaded that the acts and omissions committed by defendant No.1 were in respect of fraud played upon the plaintiff. Plaintiff has pleaded that despite the receipt of the payment of Rs.1,15,136/- by the defendants, they neither handed over the delivery of alleged financed car to the plaintiff, nor refunded the payment to him. Defendants even not made payment to the owner of the vehicle who has allegedly financed the car in favour of the plaintiff. Defendants misused the post dated cheque issued in the context of installments of alleged financial vehicle. Thereafter, the plaintiff stopped the payment of cheque. Plaintiff was surprised to note that defendants had even referred the case to Credit Information Bureau (India) Limited on account of dishonouring of cheque issued by the plaintiff to the defendants towards installments of car allegedly financed by them in favour of the plaintiff. Delivery of car was never handed over to the plaintiff. Defendants have taken a sum of Rs.1,15,136/- from the plaintiff for financing an used car, the delivery of which was never handed over to the plaintiff, nor advance amount was refunded to the plaintiff.

[5]. By referring to the aforesaid pleadings, the plaintiff alleged that a fraud was committed with the plaintiff and the matter cannot be referred to Arbitrator despite presence of arbitration clause in the agreement.

[6]. Learned counsel for the petitioner relied upon ***N. Radhakrishnan Vs. M/s Maestro Engineers and others, 2010 (3) RCR (Civil) 445*** and contended that in case of fraud and serious mal-practices on the part of defendant/respondent in account books and finances, the issue can only be settled in the Court in furtherance of thorough and detailed evidence to be led by the parties. Such exercise cannot be undertaken by the Arbitrator. When there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the Civil Court which would decide such matters. Learned counsel submitted that it is not a case of simplicitor fraud which would attract applicability of ***A. Ayyasamy Vs. A. Paramasivam and others, 2017(2) RCR (Civil) 518.*** Receipt of amount, non-delivery of vehicle, non-refunding of the amount and referring the matter to Credit Information Bureau (India) Limited on account of dishonouring of cheque would lead to serious complicated issues of fraud which require leading of evidence by the parties before the competent Civil Court. Learned counsel further submitted that arbitration proceedings have not yet started and

the petitioner has not submitted to the jurisdiction of Arbitrator, therefore, Arbitrator would not be in a position to decide its jurisdiction under Section 16 of the Act.

[7]. In view of allegations of fraud raked up by the plaintiff and when intensity of fraud pleaded is such that the Arbitrator will not be in a position to decide such complicated issue, then only Civil Court would have the jurisdiction to go into such questions in view of law laid down by the Hon'ble Apex Court in ***India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd., 2007(2) RCR (Civil) 362*** and ***Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and another, 2003 (3) RCR (Civil) 647***.

[8]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 10.07.2017 passed by Civil Judge (Senior Division), Chandigarh is hereby set aside. Normal consequences to follow.

[9]. Both the parties are directed to appear before the trial Court on 10.12.2018.

21.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No