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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 5th September, 2018.

+ **O.M.P. 416/2005**

S.P. RAWAT

..... Petitioner

Through: Mr. Sandeep Sharma and Mr. Aman
Dhyrim Advocates.
(M:- 9717464364)

versus

M/S UNIVERSAL FINANCERS

..... Respondent

Through: None

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Repeated attempts have been made to contact counsel for M/s Universal Financers as also counsels for Decree Holders no. 1 and 2 – Mrs. Suman Arora and Mr. Shekhar Arora respectively. Despite sending e-mails and speed post letter, no response has been received. The copy of the e-mail and postal receipt are taken on record. They are proceeded *ex-parte* and the matter is being heard in their absence.

2. The present OMP has been filed challenging the award dated 23rd May, 2002 passed by the learned Sole Arbitrator - Mr. Harinder Singh. The entire award is in two paragraphs and the same is captured herein below:

“By an agreement dt. 15.5.2001, I was appointed Sole Arbitrator by the parties above named. The dispute having arisen between them, which has been stated in

the reference petition and the same has been referred me by the claimant for my adjudication and Award. Accordingly I entered upon the reference and summoned the parties to appear before me. The claimant did appeared before me throughout the proceedings and none appeared on behalf of the respondent No.1, 2 & 3. Hence all the respondents were proceeded ex parte. I have gone through the entire documents/ papers submitted to me by the claimant. After careful consideration of the matter and evidence/ documents produced before me, I award a sum Rs.642885/= in favour of the claimant M/S Universal Financiers and against the respondents No.1,2 & 3 who are jointly and severally liable for payment. The respondents are further directed to pay future interest @ 18% P.A. w.e.f. 23.05.2002 till the date of realisation. The claimant has paid my fee of Rs.1000/= and the same has been included in the Award which is payable by the respondents.

Award made, announced and signed today on 23rd day of May,2002 at , E-31, Vijay Nagar,-11009.”

3. The case of M/s Universal Financiers 1/10, Roop Nagar, Delhi is that one Mrs. Suman Arora - wife of Mr. Shekhar Arora had entered into Hire Purchase Agreement dated 15th May 2001, in respect of a car. It was claimed that Mr. Shekhar Arora was guarantor no. 1 and Mr. S.P. Rawat, the Petitioner herein, was guarantor no. 2. The said agreement had an Arbitration Clause which reads as under:-

“15. All disputes, differences and or claims arising out of this hire-purchase agreement shall be settled by arbitration in accordance with the provision of the Indian Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole arbitrator Sh. Harminder Singh or in case of his death, refusal, neglect,

inability to act as an arbitrator to the sole arbitration of Sh. Harminder Singh, E-31, Vijay Nagar, Delhi. The reference of the arbitrator shall be with the clauses, Terms and Conditions of this Agreement. The award given by the Arbitrator shall be final and binding on all the parties concerned.”

Perusal of the Arbitration Clause itself shows that the same is illogical inasmuch as Mr. Harminder Singh is appointed as the Sole Arbitrator and in case of his death, he is appointed as the Sole Arbitrator again. Such an arbitration clause would be *per se* void.

4. Under the said agreement, notice was issued by counsel Mr. P.K. Shrivastava on behalf of his client – M/s Universal Financers, invoking the above arbitration clause, on 9th January, 2002, the contents of the notice read as under:

“REP.OF/1/4538/2001
Smt. Suman Arora
801.Dr. Mukherjee Ngr
Delhi-9

Dated : 09.1.2002

Sh. Shekhar Arora
801.Dr. Mukherjee Ngr
Delhi-9

Dr. Mukherjee Nagar,
Sh. Surya Prakash Rawat
389-F, Pocket-II, Mayur

Dear Sir,

Under instructions from and on behalf of my clients M/S Universal Financers, I/10, Roop Nagar, Delhi, I m to address you as under:

1. That you Smt. Suman Arora party No. 1 as hirer and Sh. Shekhar Arora and Sh. Surya Parkash Rawat party No. 2,3 a guarantor entered into a hire purchase agreement dt. 15.5.2001 with my clients at Delhi in

respect of car.

2. That you party No.1 agreed as hirer to pay to my clients the hire money in 24 instalments of Rs. 24666/- each falling due on 15th of every month commencing from 15.6.2001 and you party no.2,3 guaranteed the aforesaid payments as guarantor.

3. That you party No. 1,2 & 3 agreed to pay to my clients the outstanding amount of hire money in lump sum from the date of default besides postage and conveyance charges, compensation charges and legal charges incurred by my clients in your account and you also agreed that in the case of default of payment of instalments you shall be liable to give the possession of Car or in the alternative pay the compensation charges to my clients besides the amount of pending instalments and overdue charges etc.

4. The following amount is now due to my clients from you:-

Amount financed & F.C.	Rs. 592000.00
Postage and conveyance charges	Rs. 885.00
Compensation charges for late payment	Rs. 48000.00
Legal Notice Fee	Rs. 1000.00
	<u>RS. 641885.00</u>

5. As per clause 15 of agreement executed by you, you are called upon to refer the above dispute to the Sole Arbitration of Sh. Harminder Singh, E-31, Vijay Nagar, Delhi, within 15 days from the date of this notice and by your failing in the same my client shall refer the matter to the Sole Arbitrator Sh. Harminder Singh.

A copy of this notice has been retained in my office.

Yours Faithfully,

*(P.K. Srivastava)
Advocate"*

5. After the said notice, it appears that the Sole Arbitrator has entered reference on 5th February, 2002. The first order passed by the Arbitrator dated 24th February, 2002 reads as under:

"Present: S.S. Lamba, partner claimant firm. None present on behalf of the respondents. Smt. Suman Arora, Sh. Shekher Arora and Sh. Surya Parkash Rawat, inspite of Regd. Notice served upon them. Hence they are proceeded exparte after awaiting for

two hours. The claimant is directed to present his witness/evidence on 8.4.2002 at 11.30 A.M. at E-31 Vijay Nagar, Delhi.

*(Harinder Singh)
Sole Arbitrator”*

It can be seen from the above order passed by the Sole Arbitrator that the Arbitrator presumes that the registered notice was served upon the Petitioner herein and the other Judgment Debtors. On the first date itself, the Arbitrator had proceeded with all three of them *ex-parte*.

6. On the next date, i.e. 8th April, 2002, no statement of claim was filed, however, only the statement of Mr. S.S. Lamba – partner of M/s Universal Financers was recorded to the following effect.

“Present. Claimant in person. None for the respondents. The claimant wants to make the statement. Let the statement of the claimant be recorded.

Statement of Sh. S.S. Lamba, partner/claimant from M/s Universal Financers

The claimant is a Registered partnership firm and I am one of the partners. Form ‘A’ of Registration is Ex-C1. The respondents 1, 2 and 3 entered into agreement on 15.5.2001 which is duly signed by the respondents 1, 2 and 3 as hirer and guarantors besides the signature of witness. The said agreement is Ex-C2. The respondents also signed Proposal/Application form containing full particulars of the respondents. The same is Ex-C3. The respondents also executed a Promisory note and Receipt in favour of the claimant for Rs.400000/= through cheque no.177946 dt.15.5.2001 drawn on Citi Bank, New Delhi and carries interest at the rate of 24% P.A. The said Promisory note and Receipt are Ex-C4 and Ex-C5 respectively. As per terms and conditions of the Agreement, the respondents and claimant have agreed to refer the dispute between them to your goodself for Arbitration. Since the dispute have

arisen, and the reference, Therefore, was made to you for adjudication. The respondents did not pay the installments amounting to Rs.592000/=. The respondents are also liable to pay the compensation charges for non payment amounting to Rs.48000/= (Rs. Forty eight thousand only). The respondents are liable to pay the postal, conveyance and legal charges amounting to Rs.1885/= Besides this the defaulting parties are liable to pay charges of the Arbitrator amounting to Rs.1000/=. Thus the claim of the claimant comes to Rs.642885/= Besides future interest as deemed fit by your honour. The statement of the claimant recorded. To come up for further proceedings on 24.4.02 at 4 PM at E-31, Vijay Nagar, Delhi.”

The said statement is treated as the claim petition and the award is passed on the third date i.e. 23rd May, 2002. The award simply decreed the claim for Rs.6,42,885/- along with interest @ 18% per annum and Arbitrator's fee at Rs.1,000/-.

7. The decree holder filed an execution petition before this Court along with the entire original arbitral record. It was when notice was issued in the said execution petition that the Petitioner herein claims to have acquired knowledge of the passing of the award itself. The objections are thereafter filed by Judgment Debtor No.3 which is thereafter converted into O.M.P. vide order dated 16th November, 2005 which reads as under:

“Ex.P. No.267/2002

List on 14th December, 2005.

EA Nos.37/2003, 201/2005

Dismissed as not pressed.

EA NO 38/2003

These are objections under Section 34 of the Arbitration and Conciliation Act, 1996, therefore they are liable to be registered as an OMP. Ordered

accordingly. The pleadings in respect of this application be placed in a separate file. The cause title should be shown as S.P. RAWAT Vs. M/s Universal Finance

Mr. S.P. Rawat shall remain personally present in Court for recording of his statement in view of the certain averments made in the petitioner.

List on 14th December, 2005.

EA Nos. 112-113/2005

These applications are actually disposed of vide order dated 20th April, 2005 where the EA Numbers have been wrongly typed as EA Nos.121 and 123/2005 instead of EA Nos.112-113/2005.”

Thus, the present O.M.P. is being treated as an objection petition under Section 34.

8. The main planks of challenge to the award are as under:
- i) that the Petitioner never received any notice from the Arbitrator about him entering reference or any further proceedings in the said matter;
 - ii) the Hire Purchase Agreement does not bear the signatures of the Petitioner inasmuch as the Petitioner had only stood as a guarantor in an earlier agreement relating to the finance of four cars. The same had reached finality after the four cars were taken possession of and sold by the Decree Holder. The present agreement of 15th May, 2001 is claimed to have not been signed by the Petitioner.
 - iii) the next ground of challenge is that the so called Sole Arbitrator is the brother of one of the partners of the Decree Holder and this fact was not disclosed.
 - iv) it is also contended that the Arbitrator himself runs a firm by the name M/s Unique Financer in which the partner of the Decree Holder acts as an

Arbitrator. Thus, it is claimed that the entire process of arbitration is vitiated by fraud.

9. This Court has perused the record of the Arbitrator which is filed with the execution petition. The first startling observation is that the Decree Holder has himself filed the entire original arbitration record. It is quite strange as to how the original arbitration record could be in the possession of the Decree Holder. This lends credence to the fact that the Arbitrator is connected and related to the partner of M/s Universal Financer. The allegation in respect of the relationship was raised in the application filed before this Court under Order XXI Rule 106 in the execution petition to the following effect:

“2. The judgment debtor No. 3 submits that on enquiry it has also come to his notice that the ld. Arbitrator is the real brother of Shri Satwant Singh partner of Universal Finance the decree holder. It is further submitted that the ld. Arbitrator resides at E-31, Vijay Nagar, New Delhi and the partner of decree holder resides in E-32, Vijay Nagar, New Delhi. The copy of the Electoral Roll 2003 is also annexed with this application. It is further pertinent to submit that the ld. Arbitrator and his son is also into finance business under the name and style Unique Finance and it has come to the knowledge of the judgement debtor No.3 that in those agreements Shri Satwant Singh is appointed as an arbitrator. From the same it is apparent that a fraud has been played upon this Hon’ble Court. It is also pertinent to submit that the entire original record of the arbitration proceedings has been filed by the decree holder alongwith the execution but there is no detail as to how and on what basis the same came in possession of the decree holder.”

In reply to the above averments, the decree holder averred as under:

“2. That in response to para No.2 of the

application, it is submitted that the Sole Arbitrator Mr. Harminder Singh was duly appointed vide clause no.15 of the Hire Purchase Agreement dated 15.5.2001 wherein all the judgment debtors/respondents duly consented, approved and acknowledged the said appointment of the sole arbitration of Shri Harminder Singh, as the sole arbitrator, in case of any dispute between the parties and in any case it is well settled principles of law that mere relationship of the arbitrator with either the claimant or any of the parties to the dispute cannot vitiate the arbitration proceedings and also cannot bring a clout to the fairness of the conduct of the learned Arbitrator during the arbitration proceedings. Thus it is submitted that there is no fraud whatsoever played by the decree holder as falsely alleged. It is further submitted that the entire original record have been filed on record by the decree holder along with the execution petition and which forms part of the record. It is specifically denied that the learned arbitrator and his son are also doing finance business in the name and style of Unique Finance. It is further submitted that the appointment of Shri Satwant Singh in some of the agreements as arbitrator in M/s Unique finance has no relevance to the facts of the present case and the proceedings.”

A perusal of the above two paras clearly shows that the decree holder does not dispute the fact that the Arbitrator is related to the partner of the decree holder. It is claimed by the decree holder that the fact that the brothers are acting as Arbitrators in each other's finance companies, is of no relevance. However, as far as this Court is concerned, the said averment is a material circumstance that vitiates the award itself.

10. A perusal of the so called orders of the Arbitrator shows that there are a total of four dates before the Arbitrator. On the first date i.e. 24th February,

2002, the Judgment Debtors are proceeded *ex-parte* without any notice and simply on the basis of the lawyer's notice invoking arbitration. On 8th April, 2002, the statement of the Claimant is recorded without any claim petition having been filed. On 24th April, 2002, the matter is adjourned to 23rd May, 2002 for passing of the award. On 23rd May, 2002, the impugned award was passed.

11. The manner in which the arbitration proceedings have been conducted shows that the same is a complete farce. The manner in which the award was made, falls foul of even the basic legal procedure that is to be adhered to. The entire arbitration proceeding has been made a mockery of, in this manner, by two brothers who are clearly acting as Arbitrators in each other's companies and transactions. The arbitration clause is fundamentally flawed as it nominates the same person both times i.e., firstly as an arbitrator and then upon the death of the named arbitrator, the same arbitrator is named as the replacement arbitrator. It is clear that such an arbitration clause lacks basic application of mind and also shows the absence of any semblance of fairness and logic. The arbitration proceedings are completely vitiated because –

- i. No notice was issued by the arbitrator to any of the party – respondents;
- ii. No statement of claim was filed – only an oral statement running into one paragraph was recorded;
- iii. No evidence was led;
- iv. The agreement was not proved;
- v. The signatures of the parties were not proved;
- vi. The arbitration clause was void;

- vii. The arbitrator was himself the brother of the partner of the claimant/decreed holder firm;
 - viii. The arbitral record was in the custody of the claimant who filed it with the execution petition;
 - ix. The award was also not sent to the judgement debtors.
12. The above demonstrates an appalling state of affairs insofar as the arbitration proceedings are concerned. Without going into the question as to whether Mr. Rawat has in fact signed the Hire Purchase Agreement, the reasons as listed above are sufficient to set aside the award. The impugned award is accordingly set aside.
13. O.M.P. is allowed.

SEPTEMBER 05, 2018
Rahul

PRATHIBA M. SINGH
JUDGE