

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL REVISION APPLICATION NO. 29 OF 2018**

Mahindra and Mahindra Financial Services Ltd., a Company registered under the Company Act, 1956, duly represented by an authorized representative, Mr. Jacinto Menezes, having office address at 2nd floor Nova Cidade Complex, Alto Porvorim, Goa, major in age, resident of Staywell Apartment, Ground floor, Khorlim, Mapusa, Bardez, Goa.

.... Applicant

Versus

Shri Adil Anwar Shaikh, aged about 28 years, s/o Basurur Anwar, resident of House No. 999, near Holy Cross Chapel, Near Vadem, Vasco Da Gama, Goa.

.... Respondent

Mr. Vivek Rodrigues with Mr. Vithal Naik, Advocates for the Applicant.

Mr. E.O. Mendes, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 30th January, 2019

ORAL JUDGMENT:

By consent of parties, this civil revision application is taken up for final disposal at the stage of admission.

2. The petitioner is the original defendant in Regular Civil Suit No. 56/2012/B, pending on the file of the learned Senior Civil Judge at Vasco. That suit is filed by the respondent

herein, in respect of return of the vehicle namely, Wagon R, bearing registration no. GA-06/D-4888 and for damages and compensation.

3. After the evidence of the respondent/plaintiff was over, the petitioner filed an application (Exhibit D-52), under Order VII, Rule 11 of the Civil Procedure Code (Code, for short) for rejection of the plaint on the ground that it is barred by law.

4. The application was opposed on behalf of the defendant.

5. That application has been dismissed by the learned Trial Court by impugned order dated 21.08.2018. Hence, this petition.

6. I have heard Mr. Rodrigues, the learned Counsel for the petitioner and Mr. Mendes, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

7. Mr. Rodrigues has taken me through the plaint in order to submit that the case made out by the respondent in the

plaint is that an amount of Rs.1,74,500/- was paid by the petitioner on 12.12.2009, to the respondent in full and final settlement of the loan account. It is submitted that the arbitration proceedings were initiated on 15.04.2011 and the learned Arbitrator passed the award on 15.07.2011. In the plaint, the case made out is that the said award is vitiated by fraud, as the respondent did not dispute before the Arbitrator that he had received an amount of Rs.1,74,500/- in full and final settlement of the loan account. It is thus pointed out that the payment of Rs.1,74,500/-, allegedly in full and final settlement of the loan account was much prior to the passing of the award.

8. The learned Trial Court however in para 7 of the impugned order has observed that the case of the respondent/plaintiff is based on subsequent developments as regards the settlement, after the award has been passed.

9. Mr. Mendes, the learned Counsel for the respondent, in all fairness, does not dispute that the said observation in para 7 of the impugned order is factually incorrect.

10. Mr. Rodrigues, the learned Counsel for the petitioner has pointed out that by an award dated 15.07.2011, the

Arbitrator while awarding the sum of Rs.2,62,581/- has directed to adjust the amount, out of the sale proceeds of the seized vehicle. It is further submitted that although, a notice of the arbitration proceedings was served on the respondent, the respondent failed to put in appearance. It is submitted that even a copy of the award was served on the respondent on 07.03.2012. However, the respondent has chosen to file a civil suit, in which, the plaint is liable to be rejected under Order VII, Rule 11 of CPC.

11. Mr. Mendes, the learned Counsel for the respondent has pointed out that the respondent is not challenging the award, in the civil suit. What is challenged is the action of the petitioner in not disclosing the payment of Rs.1,74,500/- in full and final settlement of the loan account and also not giving credit, insofar as the sale proceeds of the vehicle are concerned.

12. I am afraid, these aspects have not been referred to in the impugned order. The impugned order is primarily based on the observations in para 7 of the order that the suit is based on subsequent developments as regards the settlement, after the award has been passed.

13. In such circumstances, I find that it would be appropriate that the Trial Court reconsiders the application (Exhibit D-52) on its own merits, for which, the learned Counsel for the respondent has no objection.

14. In the result the following order is passed:

ORDER

- (i) The revision application is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application (Exhibit D-52) is restored to the file of the learned Trial Court for disposal in accordance with law.
- (iv) Rival contentions of the parties are left open.
- (v) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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