

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10395 OF 2019

Shri Rajendra Kumar Gupta

... Petitioner.

V/s.

M/s. Shriram Transport Finance
Company Ltd., & Anr.

... Respondents.

Mr. S. R. Gupta, Advocate for the Petitioner.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 04, 2019.

PC :

1 Heard Mr. S. R. Gupta, learned counsel for the
Petitioner .

2 This petition has been filed under Article 227
of the Constitution of India, for quashing of order dated
06.03.2019 passed by the learned Sole Arbitrator in
Arbitration Case No. STFC-532 of 2015.

3 First Respondent has instituted the arbitration
proceeding against Respondent No. 2 for recovery of an
amount of Rs. 29,48,016/- alongwith the other reliefs.
The said amount had been claimed on account of failure

of Respondent No. 2 to repay the loan amount taken for purchase of vehicle in respect of which petitioner was the guarantor. During the pendency of the arbitral proceeding, present petitioner filed an application on 28.09.2016, requesting the learned Arbitrator to frame issue of limitation as a preliminary issue and to decide the same at the outset.

4 By the impugned order dated 06.03.2019, learned Arbitrator rejected the said prayer with further direction that the arbitral proceeding would continue. It is this order which is impugned in the present proceedings under Article 227 of the Constitution of India.

5 Relevant portion of the order dated 06.03.2019 is extracted here-in-below.

“ The Respondent No.2 has filed this application dated 28.09.2016, stating to frame and decide the issue of Limitation as preliminary issue.

1. It is submitted that the loan was allegedly granted to the Respondent No. 1 on 28.02.2006, the claim petition has been filed in the year, 2016. Hence, it is filed beyond the law of limitation. Therefore, it is submitted to frame

preliminary issue of Limitation before proceeding further in the matter.

2 The Claimant has filed written argument dated 17.01.2018, stating that the arbitration proceeding is filed well within time. Due to negligence on part of Respondent No. 1, the Claimant had repossessed the Vehicle and after following the due process of law, the said vehicle was sold for the best price on 27.07.2012. Thus, the subject matter of claim i.e. vehicle sold in month of July 2011 and cause of action is arisen in month of July, 2012.

3 The Respondent No. 1 is reported dead. Again the Claimant has filed rejoinder dated 31.10.2018, stating that the last payment was made by the Respondent No. 1 on 27.02.2014. Therefore, the Claim of Claimant is well within the limitation. The claim petition is filed on 30.09.2015. After perusal of statement of claim, it is clear that the last payment was made on 27.02.2014 of Rs. 7,250/- (Exh.4).

4 Even the date of Registration of claim petition is on 27.11.2015 and date of reference to me by claimant's letter is dated 02.11.2015(Exh.6). The said dispute was referred in view of agreement between the parties, in question is for

adjudication before me. I have considered section 21 of Arbitration and Conciliation Act, 1996, in respect of commencement of arbitration proceeding and the case is started from the claimant's reference letter dated 02.11.2015. I have also considered section 43 of the said Act, wherein the Limitation Act, 1963 shall apply to the Arbitration proceeding, as applies to the civil courts.

5 Thus, after considering the date of last payment i.e. dated 27.02.2014, and arbitration reference letter dated 02.11.2015, submissions of the both sides and documents available on records, I do not find any reasons for framing the preliminary issue of Limitation and I have no hesitation to hold that the Arbitration case is well within a time as contemplated u/s. 21 and 43 of the Arbitration and Conciliation Act, 1996. Therefore, I proceed to pass the order.

ORDER

The Application dated 28.09.2016, filed by the Respondent No. 2 to frame and decide issue of Limitation is hereby rejected and the said case to proceed further.

Dated this 6th March, 2019."

6 While rejecting the application of the Petitioner, it was further held by the learned Arbitrator that the claim petition was filed within limitation.

7 Learned counsel for the Petitioner strenuously argued that the said finding of the learned Arbitrator is erroneous, since factually the claim is barred by limitation under section 19 of the Limitation Act, 1963.

8 The Arbitration and Conciliation Act, 1996 has been enacted to consolidate and amend the laws relating to domestic arbitration etc. and also to define the law relating to conciliation and for matters connected therewith or incidental thereto. Under section 89 of the Code of Civil Procedure, 1906, arbitration is one of the modes of alternative dispute resolution. From the scheme of the Act, it is evident that arbitration is not only an alternative mode of dispute resolution but the same is also an expeditious method of dispute resolution. The Act provides the remedy against an arbitral Award, namely under section 34 thereof. Interference by the court under Article 227 of the Constitution of India, that too at the interlocutory stage in arbitration proceeding is, therefore, unwarranted and would be against the very object of

the Act. All issues are to be decided at the time of passing final Award. To that extent all contentions are open to the Petitioner. If the learned Arbitrator had made some observations in the order dated 06.03.2019, the same is to be construed only for the purpose of deciding the application filed by the Petitioner on 28.09.2016 and nothing more should be read into it.

9 In view thereof, court is not inclined to interfere with the arbitral proceeding at the interlocutory stage.

10 Writ petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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