



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 15.04.2019

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2652 of 2015
and
M.P. (MD) No. 1 of 2015

M/s. Equitas Finance Company Private Ltd.,
Rep. By its Manager,
S. Subbaih

.. Petitioner

Vs.

Sivanathan

.. Respondent

Prayer : This Civil revision petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the District Munsif Court, Tiruchendur in I.A.No.347 of 2015 in O.S.No.23 of 2015 on 09.09.2015.

For Petitioner : Mr.M.Sankar
For Respondent : Mr.A.Arumugam

ORDER

Heard Mr.M.Sankar, learned counsel appearing for the petitioner and Mr.A.Arumugam, learned counsel appearing for the respondent.

2.This Civil Revision Petition is filed against the order passed in I.A.No.347 of 2015 in O.S.No.23 of 2015 dated 09.09.2015 on the file of the learned District Munsif, Tiruchendur.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent has filed a suit in O.S.No.23 of 2015 seeking for a prayer of injunction not to take possession without due process of law of the vehicle and for mandatory injunction to hand over RC Book. In that suit, the petitioner herein filed a petition in I.A.No.347 of 2015 for referring the matter to arbitration and to dismiss the suit in accordance with clause 29 of the Agreement deed dated 28.06.2014 entered between the petitioner and the respondent. The trial Court dismissed the petition. Against which, the petitioner has preferred this revision petition.

4.On the side of the petitioner, it is stated that the respondent approached the petitioner for granting a loan of Rs.3,96,000/- for a purchase of Eicher lorry. The loan was



sanctioned to the respondent. The respondent entered into an agreement for higher purchase and executed a loan agreement. In that loan agreement, there is a clause for arbitration. Both the parties have agreed upon the agreement and signed the agreement. As per clause 29 of the agreement, if there is a dispute between the parties, it should be referred only to the arbitration and as per the Arbitration Act, the civil Court has no jurisdiction to try the case.

5. On the side of the respondent, it is stated that there is no such agreement for arbitration and the prayer sought for is that the vehicle of the plaintiff should not be taken away or destroyed without due process of law. Without following the procedure, the petitioner is trying to grab the property. The receipt for payment is not given to the respondent. There is no bar under Section 8(3) of the Arbitration Act. The remedy available to the petitioner is to appoint an arbitrator, he cannot approach the Court for dismissal of the suit.

6. On the side of the respondent, it is stated that while the suit is pending, the petitioner appointed an arbitrator and the arbitrator passed an *ex parte* award. The petitioner has filed an E.P. for execution of that award. Concealing all that facts, the petitioner has come forward with this revision petition.

7. It is seen that the respondent is the borrower who obtained a loan from the petitioner herein. The loan agreement is not denied by the respondent and Clause 29 of the loan agreement clearly reveals that there is an arbitration clause in the agreement. I.A. petition is filed for dismissal of the suit as the matter is to be referred to the arbitration. But the trial Court did not consider the petition as the petitioner failed to seek a prayer of appointment of an arbitrator. As per Clause 29 of the loan agreement, the petitioner is having the right to appoint an arbitrator. The prayer sought for in the suit is that the vehicle of the respondent should not be taken away without the due process of law. The petitioner has rightly approached the Court before filing the written statement. When there is an arbitration clause, the petitioner is having the right to approach the trial Court for dismissal of the suit.

8. It is seen that an arbitrator was appointed and an award was passed. If the respondent is aggrieved with the award passed by the arbitrator, he has to take action against that award by approaching the proper forum. The action taken by the petitioner is not illegal or unlawful. The action taken under the Arbitration Act is a lawful one and the suit filed by the respondent is not against that lawful action of the petitioner.



9. In view of the above, this Civil Revision Petition is allowed and the order passed in I.A.No.347 of 2015 in O.S.No.23 of 2015 dated 09.09.2015 on the file of the learned District Munsif, Tiruchendur is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

1.The District Munsif, Tiruchendur.

+1CC TO MR.M.SANKAR, Advocate Sr. No. 61216

C.R.P.(PD)(MD)No.2652 of 2015

15.04.2019

TR (10.06.2019) 3P 3C