

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR no.1646 of 2016 (O&M)
Date of Decision: 13.02.2019

Tata Motors Finance Limited and others ...Petitioners

Vs.

Jagdeep Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Amandeep Kaur, Advocate for
Mr. R.M. Suri, Advocate, for the petitioners.
Mr. Tajinder Pal Singh, Advocate, for the respondent.

Amol Rattan Singh, J (Oral)

Notice had been issued in this petition on March 03, 2016, with learned counsel for the respondent having put in an appearance on many occasions.

On the last date of hearing, i.e. 05.12.2018, the following order has been recorded:-

“Though other than on the issue of the vehicle (purchased by the respondent on the strength of the loan stated to have been advanced by the petitioner), being taken away forcibly, I see no reason to not allow the petition, especially with Mr. Suri, learned counsel for the petitioners, having made a statement to the effect that the vehicle in question would not be taken by the company except by due process of law; however, learned counsel for the respondent submits that even as regards the arbitration proceedings in the agreement set up by the petitioners, which the respondent denies, jurisdiction would still lie at the Court where the respondent has instituted the suit. He would cite any judgment that he wishes to rely upon, to substantiate the aforesaid contention.

Adjourned to 13.02.2019.

Interim order to continue.”

Today, learned counsel for the respondents submits that he does not oppose the petition, provided the petitioners are held bound to the statement made by their counsel, to the effect that the vehicle in question would not be taken away forcibly from the respondents and if it has to be taken, it would only be by due process of law.

The above statement having been made, it is seen that in the impugned order passed by the learned trial court (Additional Civil Judge, Jr. Divn., Abohar), while the arbitration clause in the agreement between the parties was otherwise held to be applicable, it was further observed as follows:-

“However, in the present case, the plaintiff has alleged that the defendant company is creating hurdle in plying the vehicle TATA 407 in question by illegal means. Though the same is subject to the evidence led by the parties at appropriate stage, but if it is so, then the dispute between the parties cannot be considered to be arisen from the alleged agreement. In view of these circumstances, clause 23 of the alleged agreement is not applicable in the present case and therefore, the present case is not fit to refer to arbitration as prayed for in the application. In view of these circumstances, the present application filed by the plaintiff being devoid of any merits is dismissed hereby this order.”

(The said order having been passed on an application filed by the present petitioners under Section 8 of the Arbitration and Conciliation Act, 1996, seeking that the dispute be referred to an Arbitrator)

Thus, the reason for denying the applicability of the arbitration clause, was that the allegation of the respondent-plaintiff was to the effect that the vehicle was being attempted to be taken away by illegal means.

That being so and the counsel for the petitioners having made a statement before this Court that no illegal means would be resorted to by them to take the vehicle away, and it would only be taken by due process of law, if at all it was to be taken away, the petitioners are naturally held bound to the statement, because in any case they cannot take law into their own hands.

In view of the above, the petition is allowed with the impugned order set aside, with the matter to be referred to the Arbitrator by the trial court, in terms of the arbitration clause contained in the agreement between the parties.

13.02.2019
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : No