

FAO-3845-2015 (O&M)

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

FAO-3845-2015 (O&M)

Date of Decision: July 16, 2019

SV Motors Company

Appellant

Versus

Cholamandalam Investment and Finance Co. Ltd. and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vaibhav Narang, Advocate
for the appellant.

Mr. D.K. Singal, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. The short question involved for adjudication of this Court is whether the finance company would be entitled to invoke arbitration proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 against the appellant herein.

2. In brief, the facts are that respondent no.1 -Cholamandalam Investment and Finance Company Limited (The Finance Company for short) got into a hire-purchase agreement with respondents no.2 and 3 namely Ashish Bajaj and Meena Bajaj for purchase of a car through SV Motors Company, the appellant herein. The vehicle met with an accident and was taken to SV Motors for repair wherein the bill of ₹88,034/- was drawn up, and since the bill was not cleared, the appellant-SV Motors

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retained the vehicle by till such time the respondents 2 and 3 (the borrowers under the loan agreement) did not settle the repair bill. In the meantime, on account of default in clearing the loan, as per the terms and conditions of the loan agreement entered into between Finance Company and respondents no.2 and 3, the application came to be filed before the Additional District Judge, Jalandhar under Section 9 of the Arbitration and Conciliation Act seeking appointment of a receiver and for allowing the finance company to sell the said vehicle through an auction and to appropriate the sale proceedings into a loan amount of the said borrowers. Since, the car was lying in the possession of the appellant herein, Respondent no.1 filed an application under Order 1 Rule 10 CPC for impleading the appellant herein as a necessary party. Consequent thereto a reply was filed taking an objection that he was not a party to the loan agreement and arbitration proceedings should commence only between the Finance Company and the borrowers namely respondent no 2 and 3. However, the Additional District Judge ignoring the contention raised, allowed the said application with a direction to the appellant herein to handover possession of the said vehicle to Finance Company Ltd. and also granted direction to sell the vehicle.

3. Aggrieved against the said order the instant appeal has been filed. The primary argument raised by the learned counsel for the appellant herein is that the Additional District Judge, Jalandhar has erred in issuing the necessary direction as he was not a signatory to the arbitration agreement, whereas on the contrary it has been argued that there is no proper remedy available to recover the vehicle which was hypothecated to them.

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4. I have heard learned counsel for the parties and find no merit in the contentions raised. Admittedly, the Finance company advanced a loan to respondent no 2 and 3 which was to be repaid in monthly installments and in case of a default the outstanding could be recovered though, putting the vehicle to auction and recovering the balance price through proper course. The appellant was not a signatory to the loan agreement containing the arbitration clause, nor is there any *lis* pending between the Finance company and the appellant herein. Recovery has to be made from respondents no 2 and 3 for unpaid dues and the appellant is not liable to settle their account. The jurisdiction of the Court to pass any order under Section 9 of the Act of 1996 would be restricted to the signatories/parties to the arbitration agreement. The term Party has been defined under section 2 (h) of the the Arbitration and Conciliation Act 1996 to read as (h) "party" means a party to an arbitration agreement. The basic requirement under the provisions of the Arbitration and Conciliation Act 1996, entitling a party to invoke arbitration, is for the written consent of all the parties to the agreement to refer the dispute to arbitration. In the absence of consent, no award can be passed in favor of or against non-signatories. The court can pass any interim measure on an application filed by a party before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced, but the jurisdiction of the arbitral tribunal is restricted to the signatories to the arbitration agreement.

5. Consequently, the appellant not being a party /signatory to the loan agreement and the arbitration clause, could not have been impleaded as a party to proceedings initiated under Section 9 of the Act of 1996.

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Therefore the order dated 13.02.2015 passed by Addl. District Judge, Jalandhar is set aside, leaving it open to the respondent no 1 to avail the remedy available under the law for the recovery of hypothecated vehicle.

6. Appeal stands allowed.

July 16, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No