

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 7709 of 2014 (O&M)
Date of decision : January 06, 2020

Mahindra & Mahindra Financial Services Ltd.

....Petitioner

versus

Anoop Singh and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Nitin Thatai, Advocate, for the petitioner

Mr. Kuldip Singh, Advocate, for respondent no. 1

Fateh Deep Singh, J.

The brief prelude to this civil revision preferred by the revisionist petitioner Mahindra & Mahindra Financial Services Ltd. (in short, the Company) is that a loan agreement dated 13.10.2005 was executed between the petitioner and present respondent no. 2-Surjit Singh (who are defendants before the lower court). In pursuance to this loan agreement a sum of Rs 3,38,000/- was financed by the Company to be paid in 59 monthly installments each to the tune of Rs 7,315/- and one installment of Rs 5,181/- along with interest at

the agreed rate to enable the borrower Surjit Singh to buy Mahindra Maxx Pick Up 2WD. The loan agreement between the parties is admitted to be Annexure P/2. It is during the course of time the borrower out of this money purchased the Pick Up vehicle bearing registration No. PB02 AQ 9474, Engine No. AB51J24984 and Chassis No. MAIZAZABE51J35085 (in short the Vehicle). The borrower defaulted in the payment of instalments so due from time to time and rather sold off the vehicle to present respondent no. 1 Anoop Singh (plaintiff in the suit below) in the month of March, 2007. It is when the Company was in the process of initiating action in terms of the loan agreement, the plaintiff now respondent no. 1 filed a suit for declaration that he is absolute owner in possession of the vehicle as well as consequential relief of mandatory injunction directing the defendant Company to transfer the vehicle in the name of Anoop Singh and decree for permanent injunction restraining the Company from forcibly and illegally taking away the vehicle except in due course of law. It was during the pendency of this matter an application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, the Act) was moved by the Company claiming that under the loan agreement a stipulation has been provided that in case of any controversy between the parties, the matter would be

referred to the sole Arbitrator to be appointed by the Company and thus prayed for referring the matter to the Arbitrator. It was through the impugned orders dated 8.9.2014, the court of learned Civil Judge (Junior Division), Amritsar dismissed the application. The same is subject matter of the present challenge.

Heard Mr. Nitin Thatai, Advocate, for the petitioner; Mr. Kuldip Singh, Advocate, for respondent no. 1 and perused the records.

It is fairly conceded at the bar by the counsel for the two sides that at the time of purchase of the vehicle the same was financed by the Company and endorsement of Hire Purchase Agreement (HPA) was duly incorporated in the certificate of registration of the vehicle. It is not the case of any of the sides that an application under Section 51 of the Motor Vehicles Act, 1988 was ever brought about from the Financier. Further-more neither any 'No Objection Certificate' was issued under Section 48 of the Motor Vehicle Act. More-so no notice of transfer of ownership in terms of Section 50 of the Motor Vehicle Act was brought about to this effect of the claimed alienation of the vehicle by the principal borrower in favour of respondent no. 1 (plaintiff in the suit). Thus one can fairly draw an inference that all this transaction has come about at the

back of the Financier in whose favour hypothecation of the vehicle has come about and which still holds good at the time of even filing of the suit by the plaintiff claimed to be subsequent purchaser. Counsel for both the sides do not differ over the factual position that respondent no. 1-plaintiff in the main suit was not a signatory to this loan agreement nor any right has crystalized in him at the time of purchase of the vehicle on the basis of the loan agreement. It is subsequent thereafter almost after two years, the vehicle in question while under being hypothecation was sold to respondent no. 1 and who has sought to claim his ownership through a civil suit filed by him and which is still pending in which this application under Section 8 of the Act has come about. Thus being a claim hovering over title has to be adjudicated and which jurisdiction cannot be bestowed upon the Arbitrator. It would not be off the tangent to remark here that the right of the revisionist Company to go in for invocation of its right under the loan agreement would not and cannot be jeopardized by mere filing of the suit out of which the revision has arisen nor the Company needs to stake its claim for arbitration in the present suit as respondent no. 1 Anoop Singh was not a signatory to this loan agreement and therefore, being non privity to the same cannot in any manner take undue benefit of any

flaws in the loan agreement which are sought to be assailed even before this Court by the respondent side. More-so the principle of **buyer beware** would certainly be applicable to the case of the plaintiff and cannot under the garb of innocence wade through the obstacles that might hinder his claim to ownership. The position of law is well enunciated wherein a Full Bench of Madras High Court in **Tirumulu Subbu Chetti vs Arunachalam Chettiar, AIR 1930 Mad 382 (FB)** as well as the Hon'ble Apex Court in **M.C.Chacko vs State Bank of Travancore, Trivandrum, (1969) 2 Supreme Court Cases 343** have clearly laid down that a person not being a party to a deed is not bound by the covenants in the deed nor could it enforce the covenants and has further held that it is settled law that a person not a party to a contract subject to certain well recognized exceptions cannot enforce the terms of the contract. The case of the parties however do not fall within the ambit of these exceptions. The ratios **Hindustan Petroleum Corpn. Ltd. vs M/s Pinkcity Midway Petroleums, 2003(3) R.C.R. (Civil) 686; M/s Enco Engineers Combine Pvt. Ltd. vs M/s Bhupindera Steel (P) Ltd., 2011(2) R.C.R. (Civil) 401; M/s Everest Electric Works vs M/s Himachal Futuristics Communication Ltd., 2004(113) DLT 304 and Union of India vs Smt. Lajwant Kaur, 2003(2) R.C.R. (Civil)**

124 relied upon by the counsel for the revisionist-petitioner are factually at much variance and do not come to the aid of the revisionist and similarly the citations **Booz Allen and Hamilton Inc. vs SBI Home Finance Ltd. & Ors, 2011(5) SCC 532; Atul Singh & Ors. Vs Sunil Kumar Singh & Ors., 2008(1) R.C.R. (Civil) 908; Bhagwan Vanaspati Mills Ltd. vs M/s DLF Universal Ltd. and another, 2015(3) PLR 832; Harsh Wardhen Singh vs Mahesh Wardhen Singh, 2002(2) R.C.R. (Civil) 217; Sanjeev Goyal vs H.L.Goyal and others, 2010(2) R.C.R. (Civil) 44; Ajit Kaur vs Tri Bhawan and another, 2010(2) R.C.R. (Civil) 778; Haryana Urban Development Authority and another vs M/s Fort Estate Pvt. Ltd. 2015(9) R.C.R. (Civil) 67 and M/s Rajinder Earthmover Filling Station Ltd. and Anr. Vs A2z Waste Management Ludhiana Ltd. and ors, 2019(3) PLR 154** relied upon by counsel for respondent no. 1 are akin to the ratios laid down in **Tirumulu Subbu Chetti and M.C.Chacko** (supra).

In the light of what has come about from the records and the submissions of the counsel for the two sides, since the present plaintiff-respondent no. 1 and the petitioner who is defendant in the court below do not have a subsisting enforceable contract between them to invoke the clause of arbitration and therefore, prayer of the

revisionist for referring the matter in terms of Section 8 of the Act cannot come to their help. The court below has rightly adjudicated it so and therefore, finding no merit in the present revision petition, the same stands dismissed.

January 06, 2020

(Fateh Deep Singh)
Judge

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Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No