OD-9

ORDER SHEET

AP/477/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

FARUK HOSSAIN MONDAL
VS
CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 9th August, 2023.

Appearance:
Mr. Sankar Nath Mukherjee, Adv.
Mr. Niraj Gupta, Adv.
...for the petitioner

Mr. Dhilon Sengupta, Adv.
Ms. Pooja Sett Chakraborty, Adv.
...for the respondent

The Court: The petitioner prays for an order of injunction on the respondent under Section 9 of The Arbitration and Conciliation Act, 1996. The specific relief claimed is for a restraint on the respondent from transferring or disposing of the asset being a vehicle (truck) bearing the number described in prayer (a) of the petition.

The relief claimed arises out of a "Loan Agreement – Vehicle / Equipment Finance" executed between the petitioner and the respondent finance company on 24th September, 2022. By this agreement, the respondent gave a loan of Rs.21 lakhs to the petitioner which was to be repaid in 40 instalments. The petitioner paid the instalments from October, 2022 – June, 2023 and the petitioner claims that only the payment for July, 2023 is outstanding as on date. The petitioner also relies on a letter written by the respondent to the petitioner on 7th July, 2023 asking the petitioner to pay a total amount of approximately Rs.18.78 lakhs failing which the respondent will be entitled to enforce its rights under the agreement to recover the amount.

Since the respondent, through counsel, has taken a point of maintainability of the present application, the Court proceeds to deal with that point before going into the merits of the case.

Counsel for the respondent submits that the agreement contains an exclusive jurisdiction clause in Clause 30 where the parties agreed that the Courts in Chennai would have exclusive jurisdiction over the matter arising out of the agreement. Counsel also relies on Clause 29 providing for arbitration to say that the arbitration proceeding shall be at Chennai or any other city which the company (respondent) may choose.

Since arbitration is yet to commence between the parties, the exclusive jurisdiction clause points to Chennai. On perusal of a copy of the loan agreement, however, (the respondent has not produced the original agreement in Court despite being asked to do so) it appears that the petitioner as the borrower and one Selima Parvin as the co-borrower have signed only on the last page of the agreement containing the Schedule. Significantly, the last page of the agreement does not contain either the exclusive jurisdiction or the arbitration clause fixing Chennai as the Court of choice. The only statement made in the Schedule is that the place of agreement is in Chennai.

This Court is therefore of the view that the petitioner was by no means informed or made aware of either the exclusive jurisdiction clause or the arbitration clause. The petition also contains specific pleadings that the respondent did not make over a copy of the agreement to the petitioner until the Court directed the respondent to do so in the course of the present proceedings. This Court is hence of the firm view that the petitioner cannot be bound by the exclusive jurisdiction clause and hence cannot be ousted from this Court on the strength of the clause which the petitioner was not even made aware of.

The Court hence proceeds to decide on the *prima facie* case made out in the petition.

There is a dispute with regard to the quantum which the petitioner says is due from the respondent and the respondent says is due from the petitioner. Significantly, the agreement is valid till 25th January, 2026. While the petitioner says that the respondent would at best be entitled to approximately Rs.1.30 lakhs for the instalments for July and August, 2023, the respondent has claimed an amount of approximately Rs.18.78 lakhs. Even if the respondent's case is accepted, the amount outstanding from the petitioner would be Rs.69,699 x 3 (for 3 months) which is for May, June and July, 2023. The amount of Rs.69,699/- would appear from the respondent's own statement which is part of records. The petitioner says it is much less but that issue can be decided later in the arbitral proceedings which the parties are expected to make an attempt to commence as mandated under Section 9(2) of the 1996 Act.

The petitioner is admittedly in possession of the asset in question; the apprehension is that the respondent will act in terms of the letter dated 7th July, 2023 and recover the asset.

AP/477/2023 is hence disposed of with a direction on the petitioner to pay Rs.2,09,097/- within four weeks from date. The respondent shall be restrained from recovering the petitioner's asset for a period of six weeks from today. Needless to say, the parties shall abide by the terms and conditions of the loan agreement in respect of the arbitration which shall ensue shortly. The other reliefs and counter-reliefs shall be considered by the arbitral tribunal.

(MOUSHUMI BHATTACHARYA, J.)

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