



C.R.P.(MD) No.358 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	07.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.358 of 2023

and

C.M.P.(MD) No.1716 of 2023

Pasupathi

... Petitioner

Versus

Shriram Transport Finance Company Limited.

Having its registered Office previously

At No,4, Mookambika Complex,

Lady Desika Road,

Mylapore,

Chennai.

Presently at:

Sri Towers, 14A, South Phase,

Industrial Estate, Guindy,

Chennai – 600 032

and having Branch Office at

Door No. 7-6-21-A/627, Upstair Sakthi Tiles,

Opposite to Old RTO Office,

Madurai Road, Balagundu – 624 202,

Dindigul Distrit.

Represented by its Power of Attorney,

M.Janagaran

... Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the



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Constitution of India to set aside the order dated 11.11.2022 made in I.A.No. 1 of 2021 in O.S.No.71 of 2021 on the file of the Learned District Munsif, Nilakottai, Dindigul District.

For Petitioner : Mr.S.I.Muthiah

For Respondent : Mr.M.Mohammed Sherbudeen.

ORDER

This Civil Revision Petition is preferred as against the order dated 11.11.2022 passed in I.A.No.1 of 2021 in O.S.No.71 of 2021 on the file of the District Munsif, Nilakottai, Dindigul District.

2. According to the revision petitioner, the revision petitioner, as plaintiff, filed the above suit in O.S.No.71 of 2021 for the relief of permanent injunction restraining the respondent/defendant from forcibly taking possession of the suit vehicles.

3. The learned counsel appearing for the petitioner submitted that the revision petitioner borrowed certain vehicle loans from the respondent herein for purchasing seven vehicles mentioned in the suit schedule. He had been paying the EMI regularly to the respondent without any delay. While so, an amount of Rs.3,91,574/- has been added as a extra loan amount in all



the seven loans on various dates. The Revision Petitioner had paid the EMI amount regularly without any default. While being so, the respondent has calculated that he had to pay an additional amount of Rs.2 Crores as interest to the above said loans and also made several attempts to seize the vehicles without due process of law. Hence, the revision petitioner issued a notice on 12.07.2021 and the same was received by the respondent on 17.07.2021 and no reply was given by the respondent. Hence, the revision petitioner filed a suit for permanent injunction in O.S.No.71 of 2021 on the file of District Munsif Court, Nilakottai, Dindigul District.

4. It is further submitted that the respondent has filed a petition under Section 8 of Arbitration and Conciliation Act, 1996 in I.A.No.1 of 2021 in O.S.No.71 of 2021 for referring the suit for arbitration and for dismissal of the suit. The Revision Petitioner filed his Counter. However, the trial Court allowed the application and referred the matter to be dealt by the Arbitral Tribunal and the plaint was returned, to be presented before the Arbitrator by order dated 11.11.2022. Aggrieved by this, the present revision petition is preferred.



5. The learned counsel appearing for the revision petitioner would submit that as per the Section 8(2) of the Arbitration and Conciliation Act, the Judicial authorities shall entertain the application or refer the disputes to arbitration, unless the said application is accompanied with the original arbitration agreement or duly certified copy thereof. In the present case, the respondent herein failed to mark any such document and thus, there is a violation of provision as contemplated under the Act.

6. He further contend that eventhough, agreement provides that any dispute should be referred to arbitration, it would not prevent the plaintiff from approaching the Court, especially when one of the parties to the agreement are trying to commit an act opposed to the public policy. He further submits that the respondent are trying to take possession of the vehicles forcibly from the custody of the petitioner and therefore, he sought for the relief only against the illegal act of the respondent. The above fact was not considered by the trial Court and therefore, the order passed by the trial Court in I.A.No. 1 of 2021 is liable to be set aside.

7. On the other hand, the learned counsel appearing for the



respondent would submit that the revision petitioner had obtained vehicle loans from the defendant concern for the purchase of suit schedule movable properties, by executing loan hypothecation agreement. Since, the revision petitioner/plaintiff committed default in payment of monthly installments, the revision petitioner/plaintiff, knowing well that Civil Court does not have jurisdiction over the subject matter of the suit, by virtue of an Arbitration clause in the hypothecation agreement, had approached the Civil Court. He would submit that the dispute in the suit is covered under the Arbitration clause in the agreement.

8. He also referred to the decision of case reported in (2003) 6 Supreme Court cases 203, in which it has been held that, when there is a Arbitration clause, it is mandatory duty of the Court to refer the dispute between the parties to Arbitrator and that the Civil Court has got no jurisdiction to continue with the suit once an application is filed under Section 8. The trial Court, considering the above facts, rightly allowed the application filed by the respondent/defendant which calls for no interference.



9. Heard learned counsel on both sides and perused the materials on record.

10. According to the revision petitioner, he obtained seven vehicle loans from the respondent company for purchasing the suit schedule movable properties. According to him, without any default he had paid EMI amount to the respondent. While so, an amount of Rs.3,91,574/- was added as extra loan amount in all the seven loans on various dates. The respondent has calculated and directed the revision petitioner to pay an additional amount of Rs.2 Crores as interest to the above said loan and also made several attempts to take over the vehicles from the custody of the petitioner without due process of law. Hence, he was constrained to file the above suit for injunction in O.S.No.71 of 2021 on the file of the District Munsif Court, Nilakottai, Dindigul District. While so, the respondent/defendant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the matter before arbitration and Arbitrator Tribunal for resolving the dispute between the parties.

11. The specific contention of the revision petitioner is that without



any arbitration agreement or duly certified copy of it, the matter cannot be referred to arbitration. It is further contended that when one of the parties to the agreement are trying to commit an act opposed to public policy and per se illegal, it will not prevent the revision petitioner in approaching the Civil Court. He also submits that an application is duly filed in terms of Section 8 of the Arbitration and Conciliation Act, 1996 before the Civil Court. The object of the Civil Court should be not to see whether the Court has jurisdiction. It should see whether its jurisdiction has been ousted and there is a lot of difference between the two approaches.

12. However, the Hon'ble Supreme Court of India in the case of *M/S Sundaram Finance Limited Vs. T.Thankam* dated 20.02.2015 in *Civil Appeal No.2079 of 2015* held as follows:

“In Orix Auto Finance (India) Limited v. Jagmander Singh and another 5, referring to public policy, this Court has (2003) 5 SCC 531 (2006) 2 SCC 598 taken the view that if agreements permit the financier to take possession of the finances vehicles, there is no legal impediment on such possession being taken, unless the contract is held to be unconscionable or opposed to public policy.



Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction had been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law – generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.”

13. Further in (2003) 6 Supreme Court Cases 203, the Hon'ble Supreme Court has held that, where Arbitration clause exist, Court has a mandatory duty to refer dispute arising between the contracting parties to Arbitrator. Therefore, the Civil Court has no jurisdiction to continue with



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the suit once an application under Section 8 has been filed.

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14. In the result, the order passed by the trial Court is confirmed and the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

20.12.2023

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Index:Yes/No

Speaking Order : Yes/No

To

The District Munsif, Nilakottai,
Dindigul District.



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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