

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

Civil Revision No. 4272 of 2015 (O&M)

Date of decision: 9th March, 2023

Kotak Mahindra Bank Limited and another

Petitioners

Versus

Talwinder Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A. S. Virk, Advocate for the petitioners.
Ms. Harmanpreet Kaur, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed aggrieved of order dated 23.3.2015 rejecting the application filed by the petitioners under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act').
2. The brief facts are that the respondent availed loan facility for purchase of a truck. The loan was to be repaid in monthly installments. The respondent defaulted in repayment. The petitioners took possession of the hypothecated vehicle. The respondent filed a suit for damages in which application under Section 8 of the Act was filed by the petitioners. The application was dismissed on 23.3.2015 and the court held that since possession of the vehicle was taken forcibly, the matter cannot be referred to the arbitrator.
3. Learned counsel for the petitioners relies upon arbitration clause No. 11.16 which is reproduced below:

“11.16 Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any

and all claims and disputes arising out of or in connection with this agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the bank. The arbitration shall be held in Chennai, in accordance with the provisions of the Arbitration and Conciliation Act, 1996”

He further submits that any dispute arising out of or in connection with the agreement except covered by jurisdiction of Debts Recovery Tribunal has to be settled by arbitration.

4. Learned counsel for the respondent submits that possession of the vehicle was taken forcibly by the petitioners and only suit could have been filed for claiming damages for the loss suffered.

5. There is no dispute with regard to the agreement entered into between the parties and there being a clause providing for dispute resolution through arbitration. The contention of learned counsel for the respondent that for claiming damages only civil suit could be filed is noted to be rejected. The said claim can be decided in arbitration proceedings.

6. The Supreme Court in ***M/s Agri Gold Exims Ltd. v. M/s Sri Lakshmi Knits & Wovens and others, 2007(3) SCC 686***, held:

“22. Section 8 of the 1996 Act is peremptory in nature. In a case where there exists an arbitration agreement, the court is under obligation to refer the parties to arbitration in terms of the arbitration agreement.[See Hindustan Petroleum Corp. Ltd. v. Pinkcity Midway Petroleums, 2003(3) RCR (Civil) 686 (SC: (2003) 6 SCC 503 and Rashtriya Ispat Nigam Limited (supra). No issue, therefore, would remain to be decided in a suit. Existence of arbitration agreement is not disputed. The High Court, therefore, in our opinion, was right in referring the dispute between the parties to arbitration.”

7. The arbitration clause is widely worded and includes all disputes arising out of or in connection with the agreement. The issue of taking forcible possession of the vehicle and causing loss to the respondent is connected with the agreement and can be decided in the arbitration proceedings.

8. Consequently, the impugned order is set aside. The parties

shall be at liberty to initiate arbitration proceedings as per the arbitration clause in the agreement.

9. The revision is allowed.

[AVNEESH JHINGAN]
JUDGE

9th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |