

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

CR-1252-2022

Date of Decision :12.04.2023

**Kotak Mahindra Bank Ltd.
and another**

...Petitioners

Versus

Rajesh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aman Bansal, Advocate for the petitioners.

Mr. Sushil Sheoran, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

In the present revision petition, the challenge is to order dated 03.12.2021 (Annexure P/5) passed by the Civil Judge (Senior Division), Bhiwani by which, the application filed by the petitioners-defendants under Order 7 Rule 11 read with Section 151 of the CPC has been dismissed without considering the material facts.

Learned counsel for the petitioners-defendants submits that in the present case, a suit was filed by the respondents-plaintiffs for injunction for restraining the petitioners-defendants from putting on public auction a car bearing registration No. HR-99-ABR-5089, which was lying in the custody of the petitioners-defendants, without the consent of the respondents-plaintiffs. Further, a mandatory injunction was sought against

the petitioners-defendants to produce the vehicle in question and to accept the remaining payment and handover the vehicle in question to the respondents-plaintiffs. After the notice was issued, petitioners-defendants filed the reply stating that the suit has been filed without attaching the terms and conditions of the agreement between the parties which envisaged an arbitration clause and in fact the said arbitration clause has already been exhausted and there is an award already passed by the Arbitrator in favour of the petitioners-defendants, which fact has been withheld by the respondents-plaintiffs hence, as there is already an award of the Arbitrator, present suit is not maintainable as only option with the respondents-plaintiffs was to file appropriate objections to the award passed by the arbitrator before the appropriate forum.

The said application filed under Order 7 Rule 11 of the CPC has been declined by the trial Court by the impugned order on the ground that only the averments made in the plaint can be seen and not the reply, though, the contentions being raised by the applicant-defendants went un rebutted.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, it is a conceded position that there was an arbitration clause keeping in view the agreement which was entered into between the parties while availing loan for the purchase of the vehicle in question. Keeping in view the arbitration award, an application under Section 8 of the Arbitration and Conciliation Act, 1996 could have been filed by the respondents-plaintiffs so as to exclude the jurisdiction of the

Civil Court but in the present case as even the arbitration proceedings have already been concluded, an application order 7 Rule 11 of the CPC was filed qua the maintainability of the plaint.

Present case is not exclusively under Order 7 Rule 11 of the CPC but present application is also under Section 8 of the Arbitration and Conciliation Act, 1996 qua the maintainability of the suit. The trial Court has failed to consider the relevant facts while passing the impugned order.

Once, in the facts and circumstances of the present case, even the arbitration proceedings have been concluded, the only option left with the respondents-plaintiffs is to raise all the objections under Section 34 of the Arbitration and Conciliation Act, 1996 before the competent Court against the award passed by the arbitrator but rather than availing the said remedy, respondents-plaintiffs have filed the present suit, which is not maintainable keeping in view Section 8 of the Arbitration and Conciliation Act, 1996.

At this stage, learned counsel for the respondents-plaintiffs submits that suit filed by the respondents/plaintiffs be treated as having been withdrawn and respondents-plaintiffs be given liberty to avail an appropriate remedy under Section 34 of the Arbitration and Conciliation Act, 1996 against the award passed by the arbitrator.

Learned counsel for the petitioners-defendants raises no objection to the prayer of the respondents-plaintiffs.

Keeping in view the facts and circumstances of the present case noticed hereinbefore, present civil revision petition is rendered infructuous as the present revision petition arose out of the suit filed by the respondents-

plaintiffs and the said suit has already been withdrawn with liberty to raise objections qua the award passed by the arbitrator.

April 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No