

OD-15

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/686/2024
VERSATILE CONSTRUCTION
Vs
TATA MOTORS FINANCE LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 30th July, 2024

Appearance :
Mr. Tapas Dutta, Adv.
Mr. Mrityunjoy Halder, Adv.
...for the petitioner

Ms. Anna Malhotra, Adv.
...for respondent

The Court: The writ petition has been filed against Tata Motors Finance Ltd. The petitioner was the borrower. The petitioner failed to pay the EMI. Arbitration was invoked as per the contract and the said arbitration proceeding resulted in an award. Petitioner alleges that the Finance company proceeded unilaterally, in violation of Section 12(5) of the Arbitration and Conciliation Act, 1996. Further contention is that the peremptory notice was not served upon the petitioner. The award was not also served on the petitioner. The petitioner has relied on a decision of the Hon'ble Apex Court in Civil Appeal No. 5728 of 2021, reported in 2022(2) SC

119 in support of his contentions that the power of the Court to issue writs was not a total bar even if there was an alternative remedy. Petitioner has also relied upon a decision of the Hon'ble Apex Court in Kaushal Kishor vs. State of Uttar Pradesh & Ors., reported in (2023)4 SCC 1, in support of his contention that a fundamental rights under Article 19 (1) (g) and 21 of the Constitution could be enforced against any person other than an instrumentality of the State. There is no quarrel with the proposition of law laid down by the Hon'ble Apex Court. The decision in Kaushal Kishor (supra) was rendered in a case dealing with a hate speech and the restrictions imposed under Article 19(2). The Hon'ble Apex Court held that a person has a right to freedom of speech and expression and right to life and such right could be enforced against the private individuals, meaning thereby every citizen was required by law to respect the freedom of speech and expression of another. This judgment does not have any relevance to the case in hand.

With regard to the issue of the alternative remedy not being a bar, this Court is of the view that the Arbitration and Conciliation Act, 1996 is a complete code. It provides the mechanism to challenge an award passed by an Arbitral tribunal. Remedy of the petitioner to challenge the Arbitral award is under Section 34 of the said Act. The petitioner is entitled to challenge the award before the appropriate forum.

Ms. Malhotra, learned Advocate for the respondent, submits that the petitioner consciously did not participate in the arbitration proceeding, although it was well aware of the proceeding. No adjournment

had ever been prayed for. Learned Advocate submits that copy of the award was supplied to the petitioner by the Arbitrator. The petitioner did not ever approach the Arbitrator for the copy of the Award. The petitioner was well aware of the proceedings and the interim order passed in the proceeding. The petitioner has been approaching the Writ Court on multiple pleas, without actually contesting the proceeding before the appropriate forum.

This Court is of the view that the award shall be supplied to the petitioner and the petitioner may take appropriate steps in accordance with law.

In a writ petition being WPO/7162/2024, where the petitioner had approached a coordinate Bench alleging overt act of the Police authorities, the Court had held that if any arbitration award was passed, the petitioner would be entitled to challenge the same before the appropriate forum.

Such order has been breached by the petitioner. The writ petition is disposed of.

All parties to act on a server copy of this order.

(SHAMPA SARKAR, J.)

