
(2006) 04 GAU CK 0005

Gauhati High Court

Case No: None

Tata Finance Ltd.

APPELLANT

Vs

Naresh Ch. Deb

RESPONDENT

Date of Decision: April 27, 2006

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 8

Citation: (2007) 2 ARBLR 500 : (2007) 1 GLR 153

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Judgement

H.N. Sarma, J.

By this revision petition the petitioner has challenged the order dated 25.8.2003 passed by the learned Civil Judge (Senior Division), Karimganj, in Title Suit No. 3/02 rejecting the prayer of the petitioner for stay of the suit and/or referring the matter for arbitration in view of the existence of such arbitral clause in the agreement relied on by the parties.

2. The plaintiff took a TATA truck on hire purchase basis from the petitioner by executing a hire purchase agreement. The vehicle was registered as AS-10-2873. accordingly, the plaintiff instituted the aforesaid Title Suit No 3/2002 in the court of the learned Civil Judge (Senior Division), Karimganj, on illegal threat to repossess the vehicle by defendants praying for declaration that the plaintiff is entitled to get Rs. 12,019.00 after adjustment of the balance premium and to get the duplicate key of the vehicle bearing registration No AS-10-2873 (TATA truck) and the specified form duly signed by the defendants for registration of the vehicle in the name of the plaintiff as sole owner, prayer has also been made for a further declaration that the defendants have no more claim in respect of the said vehicle and the defendants and their employees/agents be restrained by way of injunction from creating any disturbance in the plying of the said vehicle by the plaintiff. The defendants before filing of the written statements filed an application before the learned trial court

stating, inter alia, that the dispute in question is referable to arbitration in terms of the clause contained in the hire purchase agreement. Along with the said application, the defendants have submitted a photocopy of the hire purchase agreement containing the said arbitration clause. The plaintiff also filed objection against the said prayer of the defendants. The learned trial court after hearing the parties and on consideration of the objection filed by the plaintiff rejected the prayer of the defendants on the ground that the application filed by the defendant-petitioners being not maintainable as the same was not filed by the proper person and the application was not accompanied by original arbitration agreement or a duly certified copy of the same. The impugned order itself discloses that the defendant-petitioners submitted Xerox copy of the agreement and it is not disputed that the agreement in question is not a registered one. The Xerox copy of the agreement was duly certified by the concerned official of the defendant-petitioners as the said agreement was not a registered one. However, later on the original copy of the agreement was also submitted. It is submitted by Mr. R. Borpujari, learned Counsel for the petitioner, that the proper and authorized person also later on executed and submitted Vakalatnama. He further submitted that the learned trial court has acted illegally and/or with material irregularity in rejecting the prayer of the petitioner on technical grounds although such technical objection had been rectified later on and accordingly, he prayed for setting aside the impugned order.

3. Mr. N. Choudhury, learned Counsel for plaintiff-respondents, submits that the defendant-petitioners ought to have complied with the provisions of Section 8 of the Arbitration and Conciliation Act, 1996, by furnishing the original copy of the agreement or a certified copy thereof. Consequently, the order of the learned trial Court rejecting the prayer on the ground of maintainability is not required to be interfered with in this revision petition in the absence of any jurisdictional error. Mr. Choudhury has also referred to the decision reported in 2000 (2) GLR 240 which, is also relied on by the learned Counsel for the defendants in support of the respective interpretation of the provision of Section 8 of the Act.

4. I have considered the rival submissions made by the learned Counsel for the parties. Admittedly, there is no dispute at the Bar that the agreement in question contains an arbitration clause and is not a registered document. In such a situation, the question of submitting any certified copy of the agreement from a registering authority does not and cannot arise. Instead the defendant-petitioners have admittedly submitted a photocopy of the original agreement certified by the officer of the defendant-petitioners. Later on, however, the defendant-petitioners have submitted the original of the agreement. It is submitted by Mr. Choudhury that since the agreement in question is not registered one the requirement as contained in the latter part of Section 8(2) of the Act, i.e., no application shall be entertained unless the original arbitration agreement or a duly certified copy thereof accompanies it will be operative. It is seen that the aforesaid provision requires

fulfilment of either of the conditions, i.e., submission of original agreement or duly certified copy thereof. It has not been stated therein that the certifying authority should be a Governmental authority. In the instant case, the document in question is not registered one and hence the defendant-petitioners, submitted the photocopy of the same certified by their competent officer and this fact is not disputed. Since the aforesaid alternative requirements incorporated in Section 8 are statutory in nature it cannot be held to be inoperative as suggested by Mr. Choudhury. In this view of the matter, the submission of Mr. Choudhury that in the instant case the requirement of submission of the original of the agreement should only be adhered to for requirement of Section 8(2) is not acceptable.

5. So far as non-filing of the Vakalatnama by the proper person, the learned trial has completely misdirected himself while passing the impugned order. The ratio of the decision of the case referred by the learned trial court is also not applicable to the facts of the case. In the instant case, the defendant-petitioners have complied with the provisions of Section 8(2) of the Act by filing the certified copy of the agreement certified by competent officer and later on by filing the original agreement and accordingly, the rejection of the prayer of the defendant-petitioners on that count amounts to exercise of jurisdiction with illegality or with material irregularity by the learned trial court. In view of the aforesaid discussion, the impugned order cannot stand and is accordingly set aside and quashed. The learned trial court would take up the said application and after hearing the learned Counsel for the parties shall pass appropriate orders on merit of the application.

The registry is directed to send down the LCRs forthwith no costs.