
(2010) 12 CAL CK 0034

Calcutta High Court

Case No: C.O. No. 1193 of 2007

Uttam Mondal

APPELLANT

Vs

Kotak Mahindra Bank
Ltd.

RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

Arbitration and Conciliation Act, 1996 " Section 5, 8

Citation: (2010) 12 CAL CK 0034

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Amitava Das and Shyamal Chakrabarty, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Plaintiff and is directed against the order No. 21 dated August 28, 2006

passed by the learned Judge, City Civil Court, Third Bench, Calcutta in Title Suit No. 163 of 2006.

2. The Plaintiff instituted the suit for declaration, permanent and mandatory injunction stating, inter alia, that he is a registered owner of a motor

vehicle under the registration No. WB 19-6763. The Plaintiff purchased the said vehicle upon taking a loan from the Defendant/opposite party

upon execution of different papers. The said loan was duly repaid by the Plaintiff. Thereafter, the Plaintiff took another loan of Rs. 2,25,000/- to be

paid by 23 monthly instalments commencing from July, 2004. The Plaintiff repaid loan up to 17th instalment but he could not repay the balance

instalments starting from 18 to 23rd instalments. Thus, the total dues to be recovered from the Plaintiff were to the extent of Rs. 68,000/-. But all

of a sudden, on February 4, 2006 the Defendant / opposite party herein forcibly seized the said vehicle at Thakurpukur. For that reason, the

Plaintiff / Petitioner filed the said suit for the reliefs already stated.

3. The Defendant entered appearance and at the initial stage it filed an application u/s 5 and 8 of the Arbitration and Conciliation Act, 1996

contending, inter alia, that since there is a clause for arbitration, the suit in the present form is not maintainable at all. Accordingly, prayed for

dismissal of the suit.

4. Upon due consideration of the application and its objection and on hearing the submission on behalf of both the sides, the learned Trial Judge

allowed the application under Sections 5 & 8 of the Arbitration and Conciliation Act, 1996 by the impugned order and thus, he dismissed the suit

on contest without costs. Being aggrieved by the said order of dismissal of the suit, this application has been preferred.

5. Now, the point that arises for decision in this application is whether the impugned order should be sustained.

6. Upon hearing the learned Counsel for the Petitioner and on going through the materials on record, I find that initially the Petitioner took a loan

from the opposite party for purchase of the vehicle under registration No. WB 1906763 on execution of several documents. The Petitioner repaid

the entire loan amount as per terms and conditions and thus, the Plaintiff became the owner of the said vehicle. Subsequently, the Petitioner took a

loan of Rs. 2,25,000/- against the said vehicle as security on condition to repay the loan by 23 monthly instalments at the rate of Rs. 11,400/- each

and the first instalment was to be paid within July 25, 2004. The Petitioner paid 17 instalments but he could not repay the balance instalments

amounting to Rs. 68,000/-.

7. The contention of the Petitioner is that the opposite party forcibly seized the said vehicle. So, he filed the said suit for declaration and injunction.

8. At the initial stage of the suit, the opposite party filed the application under Sections 5 & 8 of the Arbitration and Conciliation Act, 1996

contending that there is an arbitration clause as per agreement for the loan. The opposite party filed a copy of the agreement which lays down the

arbitration clause being serial No. 9.19. For proper appreciation of the said dispute, this clause is quoted below:

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 the agreement or its performance shall be settled by

arbitration by single Arbitrator to be appointed by the Bank.

9. It is not in dispute that the Petitioner had signed the agreement on these terms and conditions for getting the loan. The opposite party took steps

under Sections 5 & 8 of the Arbitration and Conciliation Act, 1996 at the very initial stage. Accordingly to the provisions of the said Act,

particularly Sections 5 & 8 of the said Act, the suit cannot proceed in the form as made in the present case and as per Section 8, the parties should

be referred to arbitration for seeking the remedies and the suit cannot proceed.

10. Mr. Chakraborty, learned Advocate appearing on behalf of the Petitioner, submits that as per materials on record after seizure of the vehicle it

had been sold to a third party and if the suit stands dismissed on contest and if the Petitioner does not get appropriate remedy in the arbitration, he

would not be able to seek further relief from the Court against the third party, if requires. So, the order of dismissal should be set aside.

11. From the body of the plaint, I find that the plaint does not disclose that there is an arbitration clause. In fact, the Petitioner admitted that he

signed as many as 74/75 documents and the contents of the documents were not shown to him and that he was not aware of the contents of those

documents. Whatever may be, since the signature of the Petitioner on the agreement for conciliation is being in admitted position, I am of the view

that there is no scope to avoid the arbitration clause, as stated earlier. So, in view of Section 5 of the said Act of 1996 the Petitioner cannot be

allowed to proceed with the suit. Since it is stated that the opposite party had sold the vehicle to a third party, if the situation demands subsequently

the Petitioner may take appropriate steps against the third party in accordance with law. For the time being, in view of the arbitration clause, the

present suit cannot proceed and the parties to the suit shall be referred to arbitration in view of Clause 8 of the Arbitration and Conciliation Act,

1996.

12. So, instead of recording the order of dismissal on contest of the suit, I am of the view that such portion of the impugned order should be set

aside and in that place it shall be recorded that the suit is disposed of on contest and that the parties are referred to arbitration.

13. This application is, therefore, allowed. The order of dismissal of the Title Suit No. 163 of 2006 on contest without costs as recorded in the

impugned order is hereby set aside. It is recorded that the suit stands disposed of on contest without costs.

14. The parties to the suit are referred to the arbitration to solve their dispute. The impugned order is modified to this extent.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.