

Saroop Singh and ors. Vs. M/S. Orex Auto Infrastructure Service Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/1020622

Court : Delhi

Decided On : Aug-08-2013

Judge : V.K.Shali

Appellant : Saroop Singh and ors.

Respondent : M/S. Orex Auto Infrastructure Service Ltd. and anr.

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + F.A.O. No.11/2013 Decided on :

08. 08.2013 SAROOP SINGH & ORS. Through: Appellants Mr.Subrat Deb, Advocate. Versus M/s. OREX AUTO INFRASTRUCTURE SERVICE LTD. & ANR. Respondents CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is an appeal filed under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996 (the said Act for short) against the order dated 30.08.2012 passed by the learned ADJ dismissing the objections filed by the appellants.

2. I have heard the learned counsel for the appellants and also gone through the record.

3. The main contention of the learned counsel for the appellants is that there was no default for three continuous months and consequently the impugned order

could not have been passed. Before dealing with the contention of the learned counsel for the appellants, it would be worthwhile to mention the brief facts of the case.

4. The appellant No.1 had taken two loans one for a sum of Rs.13,40,000/- for purchase of chassis of a vehicle make TATA LPS 401.registered as HR-55-G-4635 and another loan for a sum of Rs.3,25,000/- for the purpose of body of said commercial vehicle. Both these loans including interest were to the tune of Rs.17,20,200/-. The first loan was payable in 47 equal monthly instalments of Rs.36,300/- while the second loan was payable in 28 equal monthly instalments of Rs.13,710/-. It was alleged by the respondent No.1 that the appellants frequently defaulted in payment of the instalments, as agreed to between the parties and the respondent No.1/claimant was constrained to issue notice to the appellants and recall the loan amounts. arbitration clause between the Since there was an parties, the No.1/claimant referred the matter to an arbitrator. respondent The arbitrator issued notice dated 28.06.2008 to the appellants by registered post and other modes as well. These notices were received back with the report of not being available and avoiding service. The arbitrator, after recording the evidence and hearing the matter, passed an award in favour of the respondent No.1/claimant. In the mean time, the vehicle was also re-possessioned by the respondent No.1/claimant. The receipt of the copy of the award was also disputed by the appellant.

5. The main plea taken by the appellants in their objections filed under Section 34 of the said Act was that they were not served and accordingly they sought the matter to be remanded back to the arbitrator. The learned court examined this plea of the appellants that they were not served and found it to be a false plea on account of the fact that the documents clearly showed that sincere efforts to serve the appellants and the guarantors were made umpteen times, but all proved futile. On the contrary, the appellants could not claim to be ignorant because a reply to the notice was purported to have been sent on behalf of the main borrower namely appellant no.1 through one Ms.Archana Chauhan, Advocate claiming that appellant no.1 has filed a suit for declaration and permanent injunction in Gurgaon Court against respondent No.1 so far as the vehicle in question is concerned.

6. The learned ADJ dismissed the objections of the appellant regarding non service as being without any merit and affirmed the award passed by the trial court.

7. Feeling aggrieved by the rejection of the objections, the appellant has now filed the present appeal. The main contention before this court has been that there has been no default on three successive occasions which was the only ground because of which the loan could be recalled and the matter referred to the arbitrator for the purpose of adjudication.

8. I do not consider this submission in the present appeal to be relevant for the simple reason that this question as to whether the appellants were in default or not was essentially a question of fact which has already been decided by the learned arbitrator. The appellants did not appear before the arbitrator despite having the knowledge about the proceedings. This is evident from the fact that not only repeated notices were sent to them which were avoided to be received, a reply to the notice of the respondent No.1/claimant was sent wherein the factum of a suit having been filed in a Gurgaon court, which stands dismissed, was taken as a ground for resisting their liability.

9. The learned ADJ has taken note of the fact that on merits the appellants have not denied the loan having been taken, the default having been committed or the absence of an arbitration clause and consequently all these points which have been taken before the first court raising objections to the award have been found to be false. 10. So far as the plea of default for a period of three consecutive months is concerned, this plea has been raised for the first time before this appellate court. It has neither been raised before the arbitrator nor the court where objections were filed. Therefore, the appellants have only tried to buildup altogether a new case now.

11. There is no merit in the appeal of the appellants and the same is dismissed.
V.K. SHALI, J.

AUGUST 07 2013/dm