

Aidek Tourism Services Pvt. Ltd vs Aditya Birla Nuvo Ltd on 24 August, 2016

Author: R.D. Dhanuka

Bench: R.D. Dhanuka

arbp631-09

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.631 OF 2009

Aidek Tourism Services Private Limited)

A Private Limited Company incorporated)
under the Companies Act, 1956 having)
its registered office at 12, Kalindas Udyog)
Bhavan, Century Bazar Lane,)

Prabhadevi, Mumbai - 400 025.) ...Petitioner

....Versus....

Aditya Birla Nuvo Limited,)
A Public Limited Company incorporated)

under the Companies Act, 1956)
having its registered office at)
Apeejay, 2nd Floor, Shahid Bhagat)
Singh Road, Fort, Mumbai - 400 001) ...Respondent

Mr.Mangal Bhandari i/b Ms.Pranjali Bhandari for the Petitioner.

Mr.J.P. Sen, Senior Counsel with Mr.Cyrus Bharucha, Ms.Bhavna Singh, Ms.D.J. Kakalia, Mr.H.E. Desai and Mr.Paresh Patkar i/b Mulla & Mulla & C. B. & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27TH JULY, 2016
PRONOUNCED ON : 24TH AUGUST, 2016

JUDGMENT :

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1. By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 23rd March, 2009 as modified by an order dated 22nd May, 2009, additional award dated 30th November, 2013 as corrected by an arbp631-09 order/award dated 9th January, 2014 under section 33 of the Arbitration and Conciliation Act, 1996 (for short the "Arbitration Act").

Some of the relevant facts for the purpose of deciding this petition are as under :

2. The petitioner approached the respondent for taking three Ford Scorpio cars on hire purchase basis. On 31st January, 1996 the parties entered into the hire purchase agreement in respect of the three cars bearing registration numbers i.e. MH-06-4235, MH06-4234 and MH-06-4233. According to the petitioner, the total agreement value was Rs.44,21,304/- including interest which was to be paid at the monthly installments of Rs.1,84,221/- over a period of 24 months from 16th February, 1996 to 16th January, 1998. It was the case of the respondent that the parties entered into a separate loan agreement dated 3rd February, 1996 for an amount of Rs. 38,59,882/- which was alleged to have been advanced as a loan by the respondent to the petitioner for import of the said three cars. According to the respondent, the petitioner committed default in making payment as per the hire purchase agreement dated 31st January, 1996. The respondent accordingly took possession of the vehicle no.MH-06- 4233 in New Delhi on 20th May, 2000. The petitioner herein filed a criminal complaint with various police authorities in respect of the vehicles repossessed by the respondent.

3. It was however the case of the petitioner that there was no hire purchase transaction between the petitioner and the respondent but it was a simple loan transaction entered into between the petitioner and the the respondent. According to the petitioner, the petitioner was the owner of the said three cars and thus the arbp631-09 respondent could not have taken forcible possession of the said cars. The petitioner raised debit notes on the respondent on account of hire charges alleged to be due and payable on the repossessed cars. On 28th July, 2000, the respondent herein terminated the agreements and advertised for sale of the repossessed vehicles on 19th March, 2000. The petitioner vide their advocates letter dated 27th September, 2000 objected to the said action on the part of the respondent for advertising the sale of the repossessed cars.

4. It is the case of the petitioner that the respondent sold vehicle No.MH-06-4233 for Rs.4,75,000/-. The respondent claimed Rs.49,95,977/- as on 5th April, 2001 for the hire purchase agreement dated 31st January, 1996 along with further interest at the rate of 36% per annum on the sum of Rs.16,63,514/- with effect from 5 th April, 2001.

5. It is the case of the respondent that vide their letter dated 11th November 1997, the respondent forwarded copies of various Hire Purchase Agreements to the petitioner including the Hire Purchase Agreement No.96351 in respect of Ford Cars. It is the case of the respondent that vide their letter dated 11th May 1999, the petitioner admitted the factum of receiving money from the respondent and acknowledged that certain amounts were due and payable by the petitioner to the respondent. In the said letter, the petitioner also submitted the repayment schedule under the said facility granted by the respondent to the petitioner. The dispute arose between the parties. The matter was referred to arbitration. The Indian Merchant Chambers issued a notice to the petitioner on 16th July 2001 as per clause 39 of the Hire-Purchase Agreement arbp631-09 dated 31st January 1996.

6. It is the case of the petitioner that the petitioner vide its advocate's reply dated 24th August 2001 to the Indian Merchant Chambers contended that there was no claim against the petitioner and that the arbitration agreement did not exist. However, without prejudice to the its rights and contentions, the petitioner nominated a former Chief Justice of India as its nominee arbitrator.

7. On 24th September 2001, the Indian Merchant Chambers called upon the respondent to forward original or photocopy of the arbitration agreement and forwarded a copy of the letter received from the solicitors representing the petitioner.

8. On 4th July 2001, the respondent filed statement of claim before the learned arbitrator in respect of the said three Ford Scorpio Cars on hire purchase basis for recovery of various amounts. In the said statement of claim, it was alleged by the respondent that the parties had entered into a Hire Purchase Agreement dated 31st January 1996. It is the case of the petitioner that in the said agreement annexed to the statement of claim, the schedule referred to the agreement dated 3rd February 1996. The respondent never amended the statement of claim. On 5 th April 2003, the petitioner filed amended written statement pursuant to the inspection of originals given to the petitioner on 1st February 2002.

9. On 30th May 2003, the Indian Merchant Chambers addressed a letter to the advocate representing the respondent informing that leave to amend was granted to the respondent to file arbp631-09 supplementary pleadings in view of the amended written statement filed by the petitioner herein and that the respondent however did not file any supplementary pleadings. On 10th June 2003, the learned arbitrator included an additional issue "whether claimants prove agreement dated 31st January 1996."

10. On 28th September 2004, the learned arbitrator observed that there was a serious doubt as to whether documents namely marked X-1 to X-5 i.e. agreements were duly stamped and directed the Indian Merchant Chambers to send the documents to the Superintendent of Stamps for adjudication of the correct stamp duty and directed that hearing would be taken after a report was received from the Superintendent of Stamps. In so far as this dispute is concerned, the document marked 'X-5' was the subject matter of this arbitration.

11. In view of the resignation tendered by the erstwhile arbitrator, the Indian Merchant Chambers appointed a former Judge of this Court as a sole arbitrator in place of erstwhile arbitrator. In the arbitration meeting held on 29th November 2007, the respondent through the learned senior counsel tendered five agreements in evidence on behalf of the respondent which were earlier marked as X-1 to X-5 for identification due to inadequate stamp duty. Learned arbitrator in the said meeting held that since the issue of inadequate stamp duty on such five agreements had been resolved and adequate stamp duty was paid, the photocopies of the said documents were taken on record for proceeding in the arbitral reference and the question of admitting the said documents in evidence shall be considered later on. In the said meeting, learned arbp631-09 counsel for the petitioner had tendered copies of the certain criminal proceedings in evidence which were not taken in evidence by the learned arbitrator

12. Both the parties led oral evidence before the learned arbitrator and filed written submissions. On 23rd March 2009, the learned arbitrator directed the petitioner herein to pay to the respondent a sum of Rs.49,95,977/- together with interest on principal sum of Rs.16,63,514/- @12% p.a. from 5th April 2001 till payment or realisation whichever is earlier and also directed the petitioner to hand over possession to the respondent of the cars bearing registration nos.MH-06-4243 and MH-06-4235 and also to pay costs of arbitration quantified at Rs.2,58,317/-. Learned arbitrator rejected the counter claim filed by the petitioner.

13. On 22nd May 2009, the learned arbitrator disposed of the application dated 28th April 2009 made by the respondent under Section 33 of the Arbitration and Conciliation Act, 1996 for correction/ rectification of the clerical/typographical errors in the award dated 23rd March 2009 and made few corrections which were permissible under Section 33 of the Arbitration and Conciliation Act, 1996.

14. Being aggrieved by the impugned award dated 23rd March 2009 and the order dated 22nd May 2009 thereby correcting the award dated 23rd March 2009, the petitioner herein filed this arbitration petition under Section 34 of the Arbitration and Conciliation Act, 1996. Pursuant to the chamber summons (799 of 2012) filed by the petitioner, this Court allowed the petitioner to carry

out amendment to the arbitration petition as per schedule arbp631-09 appended to the chamber summons. This Court passed an order under Section 34 (4) of the Arbitration and Conciliation Act, 1996 and remanded the proceedings to the learned arbitrator and directed to make an additional award on certain issues. Learned arbitrator after giving an opportunity to the parties to lead oral evidence on certain issues and after hearing the parties, rendered an additional award dated 30th November 2013. In the said additional award dated 30th November 2013 as corrected by order/award dated 9th January 2014 under Section 33 of the Arbitration Act, the learned arbitrator rejected the additional contentions raised by the petitioner. The petitioner thereafter carried out amendment to this arbitration petition and impugned the said additional award dated 30th November 2013 as well as the order/award 9th January 2014. The aforesaid petition was heard along with Arbitration Petition No.630 of 2009 and other two companion matters.

15. This Court has already dismissed the Arbitration Petition No.629 of 2009 by judgment and order dated 8th April 2015 between the same parties. The arbitration proceedings were heard along with other four arbitral references before the same learned arbitrator. Learned counsel for the parties adopted some of the submissions in the present petition (631 of 2009) which were identical to the submissions made by the parties in Arbitration Petition No.629 of 2009 and in the Arbitration Petition No.630 of 2009 which were also heard along with the present petition.

16. Learned counsel for the petitioner also advanced certain additional submissions in this petition in addition to the submissions adopted by the petitioner which were advanced in Arbitration Petition arbp631-09 Nos.629 of 2009 and 630 of 2009. Learned senior counsel for the respondent also responded to the additional submissions made by the learned counsel for the petitioner in this petition and reiterated the submissions made by the respondent in the Arbitration Petition Nos.629 of 2009 and 630 of 2009.

17. Mr.Bhandari, learned counsel appearing for the petitioner invited my attention to the Hire Purchase Agreement dated 31st January 1996 entered into between the parties and would submit that the said agreement was not on the stamp paper. He submits that the said agreement was signed by Birla Global Finance Ltd. He submits that pages 1 to 6 of the said agreement did not co-relate to any particular vehicles. He submits that schedule appended to the said agreement dated 31st January 1996 refers to the date of agreement as 3rd February 1996.

18. Learned counsel for the petitioner invited my attention to the loan agreement dated 3rd February 1996. He submits that stamp paper which was subsequently affixed to the loan agreement is also dated 3rd February 1996. It is submitted that in the guarantor's column, the name is mentioned by hand on stamp paper. No rubber stamp of the respondent-company is affixed. Only signatures can be seen on the last page of the said agreement. He submits that on page 16 of the said agreement, though the words "Birla Global Finance Ltd." were there, the words "owner- Authorised Signatory"

were not found. He submits that figures mentioned therein are also changed.

19. Learned counsel for the petitioner invited my attention to arbp631-09 some of the portions of the oral evidence led by Mr.Pawan Gupta who was examined by the respondent and would submit that the schedule to the exhibit which was marked as X-5 was fabricated and manipulated so as to link to the transaction between the parties. It is submitted that the schedule relied upon by the respondent has been merged by them.

20. It is submitted that production of the original agreement was necessary before the learned arbitrator with a view to test the veracity of the said witness in his cross-examination which goes to the root of the matter. He submits that though the original finance documents were not produced by the respondent, the learned arbitrator marked it in evidence illegally. It is submitted by the learned counsel for the petitioner that though signatures of the petitioner were taken on the hire purchase agreement, understanding between the parties was that it was a simplicitor loan transaction and not a hire purchase transaction.

21. Learned counsel also invited my attention to a format of the schedule annexed to the hire purchase agreement forming part of the proceedings in support of his case that the schedule annexed to the hire purchase agreement was fabricated and manipulated by the respondent. He submits that the witness examined by the respondent admitted in the cross-examination that there were several mistakes committed by the respondent in the schedule annexed to the hire purchase agreement. He submits that it was thus proved beyond reasonable doubt before the learned arbitrator that both these documents were not genuine documents but were fabricated and manipulated by the respondent.

arbp631-09

22. Learned counsel for the petitioner invited my attention to a typed copy of the agreement annexed to the statement of claim and would submit that the date on the said typed copy of the agreement is different. He submits that the notice invoking arbitration agreement was issued on the basis of the typed document which was not a correct document and thus the notice invoking arbitration agreement itself was not maintainable at all. He submits that the said Mr.Pawan Gupta had given various contradictory answers in the cross-examination and thus his evidence ought to have been discarded by the learned arbitrator in toto.

23. It is submitted by the learned counsel for the petitioner that the amounts in Indian Currency were crystallized only on 16 th February 1996 as could be seen from the debit note dated 16 th February 1996 issued by the Punjab and Sind Bank. The respondent thereafter made a demand vide their letter dated 19 th February 1996 for down payment of Rs.1,12,677/- leaving the balance of Rs.36,15,000/- as the finance amount. He submits that the hire purchase agreement thus could not be dated 31 st January 1996 or dated 3rd February 1996. He submits that even the loan agreement admittedly was not signed/executed till 15th February 1996 or was not with the respondent. He submits that though the invoice dated 2nd February 1996 was in pounds, the Indian Rupee value was not known till then. He submits that the main loan agreement was preceded by a stamp paper. All the pages of the loan agreement had rubber stamp of the petitioner but the stamp paper which was also added subsequently did not have the rubber stamp of the petitioner at all.

arbp631-09

24. It is submitted by the learned counsel for the petitioner that Mr.Pawan Gupta who was examined as witness by the respondent had contradicted several submissions made in the examination-in-chief and admitted that he had no personal knowledge as to which of the dates mentioned in the agreement were wrong. He deposed that he did not recollect whether there were any cancellations or corrections in the schedule when he had signed the said agreement. He submits that the said witness in his cross-examination confirmed that the columns in schedule being Items 3 to 11, 13, 16 to 21 were filled in later.

25. It is submitted that in view of various contradictions in the deposition of the said Mr.Pawan Gupta and he having admitted that various blanks in the agreement were filled up later, the said witness being an unreliable witness, the evidence could not have been considered by the learned arbitrator at all. He submits that in any event, various admissions made by the said witness also were totally ignored by the learned arbitrator in the impugned award. He submits that the learned arbitrator, in these circumstances, could not have marked the hire-purchase agreement as well as loan agreement in evidence though the respondent had not produced the originals of those two documents before the learned arbitrator. He submits that there was no arbitration agreement in the loan agreement admittedly and thus the entire proceedings were without jurisdiction.

26. Learned counsel for the petitioner submits that during the course of the cross-examination of the witness examined by the arbp631-09 respondent, a note was found in his custody which contained various instructions given to him to give evidence in a particular manner to a particular question which was marked as one of the exhibits before the learned arbitrator. He submits that though the said witness had answered some of the questions in accordance with what was mentioned in the said note, the learned arbitrator did not ignore the answer given by the said witness in the impugned award and on the contrary, considered such deposition made by the said witness.

27. It is submitted by the learned counsel for the petitioner that even according to the respondent, as pleaded in the statement of claim, the last monthly installment payable was on 16 th January 1998. He submits that the last date for invoking arbitration agreement was thus 16th January 2001 whereas the statement of claim was affirmed on 4th July 2001 and was filed with Indian Merchant Chambers on 11th July 2001. He submits that the claim thus made by the respondent was ex facie barred by law of limitation. He submits that the learned arbitrator could not have allowed the time barred claims.

28. It is submitted by the learned counsel for the petitioner that the only pleading in the statement of claim, in so far as the plea of limitation is concerned, was that the claim was within time. He submits that neither in the statement of claim nor even in the affidavit in lieu of examination-in-chief of Mr.Pawan Gupta who was examined as witness by the respondent, the respondent had referred to the said letter dated 11th May 1999 addressed by the petitioner in support of the plea that in view of the alleged admission arbp631-09 and acknowledgement of the liability, the period of limitation was extended under Section 18 of the Limitation Act, 1963.

29. It is submitted that the letter dated 11th May 1999 was sought to be tendered for the first time when the examination-in- chief of the said witness Mr.Pawan Gupta had just commenced.

The petitioner had raised an objection when the said document was tendered for the first time by the respondent on 11 th June 2003 on the ground that the said letter was to be treated as "Without Prejudice" letter and was inadmissible in evidence. Learned arbitrator directed that the admissibility of the said letter shall be decided later on. He submits that the said letter was put to the witness Mr.Vishal Kedia examined by the petitioner. He submits that the provisions of Order VII Rule 6 of the Code of Civil Procedure, 1908 were applicable to the arbitration proceedings and in absence of any such plea of extension of limitation due to alleged acknowledgement of the liability, the petitioner was not given any opportunity to deal with the said letter. Learned arbitrator, however, considered the said letter as conclusive while rejecting the plea raised by the petitioner which is in violation of the principles of natural justice.

30. It is submitted by the learned counsel for the petitioner that the said letter dated 11th May 1999 addressed by the petitioner was in continuation of the earlier correspondence addressed by the petitioner to the respondent which letters admittedly contained an endorsement "Without Prejudice." He submits that the learned arbitrator thus ought to have marked and exhibited the whole chain of the correspondence in evidence and not only one document which would show that all the letters were addressed without prejudice arbp631-09 to the rights and contentions of the petitioner. He placed reliance on the judgment of the Supreme Court in the case of Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust, reported in (2012) 8 SCC 706 and in particular paragraphs 16 to 18 and 22 in support of this submission.

31. Mr.Sen, learned senior counsel for the respondent invited my attention to the correspondence exchanged between the parties and in particular the terms and conditions discussed and agreed upon between the parties regarding the letter of credit opened by the bank for and on behalf of the petitioner dated 31st January 1996 in favour of Ford Motor Company Limited showing that the said letter of credit was opened on behalf of the petitioner under the hire-purchase agreement with the respondent. He also invited my attention to the invoice raised by the Ford Motor Company Limited which referred to letter of credit and hire-purchase agreement between the petitioner and the respondent. They relied upon three packing list/weight note which referred to hire-purchase agreement between the parties issued by Ford Motor Company Limited.

32. Reliance is also placed on the financial documents of the petitioner which referred to the hire-purchase agreement entered into between the petitioner and the respondent and higher charges paid by the petitioner to the respondent in respect of the same.

33. Learned senior counsel for the respondent invited my attention to some of the clauses of the hire-purchase agreement and also to the letter dated 11 th November 1997 addressed by the arbp631-09 respondent to the petitioner thereby forwarding the agreements to the petitioner in respect of various transactions between the parties.

Emphasis is laid on the reference made to the Hire-Purchase Agreement No.96351 dated 31st January 1996 for three Ford cars which also bears the acknowledgement of the petitioner. He submits that vide its letter dated 11th May 1999, the petitioner had referred to various agreements entered into between the parties with their numbers and amounts received by the petitioner under various transactions and had requested for various concessions and for re-

schedulment of the amount due.

34. It is submitted that if the petitioner would not have in their possession the copies of the agreements entered into between the parties, the petitioner would not have referred to all such agreements in detail including the contents thereof in the said letter dated 11 th May 1999. He submits that the said letter dated 11 th May 1999 admittedly did not contain any endorsement "Without Prejudice." He submits that the learned arbitrator considered this issue at a great length in the impugned award and has rightly held that the said letter was not addressed by the petitioner without prejudice to its rights and contentions and had acknowledged their liability. He submits that this Court has already decided this issue at a great length in its judgment dated 8th April 2015 in Arbitration Petition No.629 of 2009 which was filed by the petitioner against the respondent as the one out of five references decided by the learned arbitrator.

35. Learned senior counsel also invited my attention to the balance sheet of the petitioner of the relevant period showing the arbp631-09 admissions of the liability on the part of the petitioner towards the said hire-purchase agreement and the payment of finance charges under the hire-purchase scheme reflected in the balance sheet. He submits that the learned arbitrator has also considered the admitted liabilities reflected in the balance sheet. He also invited my attention to various admissions in the cross-examination of Mr.Vishal Kedia who was examined by the petitioner as one of the witnesses. He submits that the said witness admitted in the cross-examination about the transaction between the parties and did not dispute the contents of the letter dated 11th May 1999. He submits that the said witness also confirmed various amounts mentioned in the schedule annexed to the hire-purchase agreement as true and correct. He submits that various pleas raised by the petitioner were totally dishonest and were made with a view to delay the outcome of the arbitration proceedings. He submits that the agreements for payment of custom duty and loan were two separate agreements.

36. It is submitted by the learned senior counsel for the respondent that the strict rules of pleadings set out under the Code of Civil Procedure, 1908 do not apply to the arbitration proceedings.

It was not the case of the petitioner that the letter dated 11 th May 1999 was not signed by the petitioner or that the contents of the said letter were incorrect. Learned senior counsel for the respondent placed reliance on the judgments of the Supreme Court in the cases of Sardar Trilok Singh and Ors. vs. Satya Deo Tripathi, reported in (1979) 4 SCC 396 and Indian Bank vs. M/s. Satyam Fibres (India) Pvt. Ltd. reported in (1996) 5 SCC 550 in support of his submission that even if the respondent had filled up any blanks in the agreement subsequently, the same were filled up arbp631-09 as an agent of the petitioner. He submits that if those blanks were filled up in accordance with the agreement arrived at and the understanding between the parties, the same still

could be relied upon, were binding and would not amount to any fabrication of the agreement.

37. Learned senior counsel for the respondent placed reliance on the judgment of this Court in the case of Asiatic Salvors Vs.Dodsal Private Ltd., reported in AIR 1987 Bom 335 and in particular paragraphs 13 to 15 in support of the submission that the petitioner not having filed any application under Sections 12 and 13 of the Arbitration Act alleging any bias against the learned arbitrator in accordance with those provisions within the time prescribed, the petitioner cannot be allowed to raise this issue for the first time in these proceedings.

38. Learned senior counsel distinguishes the judgments relied upon by the learned counsel for the petitioner on the ground that none of those judgments were applicable to the facts of this case and were totally distinguishable.

39. Learned senior counsel for the respondent submits that most of the submissions made by the petitioner in this matter have already been rejected by this Court by rendering the judgment on 8th April 2015 which were similar to the submissions made by the petitioner in Arbitration Petition No.629 of 2009 and thus cannot be agitated by the petitioner in this arbitration petition which judgment is binding on both the parties.

arbp631-09

40. Mr.Bhandari, learned counsel for the petitioner in rejoinder submits that the respondent also in their account had shown the transaction as a loan transaction and had shown payment of interest made by the petitioner as interest and not higher charges. It is submitted by the learned counsel that the petitioner has already filed an appeal against the order passed by this Court in the review petition which was filed in the Arbitration Petition No.629 of 2009 which came to be rejected by this Court and the said appeal is pending before the Division Bench. Learned counsel for the petitioner tendered compilation of 9 judgments after concluding the arguments in Arbitration Petition No.633 of 2009 and requested that these judgments be considered by this Court in this arbitration petition.

REASONS AND CONCLUSIONS :-

41. Mr.Bhandari, learned counsel appearing for the petitioner submits that the submissions already made by the petitioner in Arbitration Petition Nos.629 of 2009 and 630 of 2009 are adopted by the petitioner as part of the submissions in this petition also. Learned counsel for the petitioner also made few additional submissions for consideration of this Court which were responded by the learned senior counsel for the respondent. The additional submissions made by both the parties are considered by this Court in the later part of the judgment.

42. Insofar as the submission of the learned counsel for the petitioner that :

- (i) the hire purchase agreement dated 31st January, 1996 was not on the stamp paper or that the said agreement was signed by arbp631-09 Birla Global Finance Limited :

- (ii). pages 1 to 6 of the said agreement did not co-relate to any particular vehicle,
- (iii). the schedule appended to the said agreement dated 31st January, 1996 refers to the date of the agreement as 3rd February, 1996,
- (iv). The stamp paper was subsequently affixed to the loan agreement which stamp paper is dated 3rd February, 1996,
- (v). The name is mentioned by hand on the stamp paper in the guarantor's column,
- (vi). no rubber stamp of the respondent company is affixed, only the signatures can be seen on the last page of the agreement,
- (vii). on page 16 of the agreement, though the words "Birla Global Finance Limited" were there, the words "owner - authorized signatory" are not found, are concerned, in my view Mr.Sen, learned senior counsel for the respondent is right in his submission that the issues now raised across the bar by the petitioner alleging discrepancies in the agreement were not raised before the learned arbitrator or were not proved in the oral evidence led by the petitioner and thus cannot be allowed to be urged at this stage across the bar.

arbp631-09

43. Be that as it may, a perusal of the impugned award rendered by the learned arbitrator clearly indicates that the learned arbitrator has dealt with each and every issues raised by the petitioner and the respondent and has considered the oral as well as documentary evidence in the impugned award and has rendered various findings of fact including the finding that the understanding between the parties as deposed by the witness examined by the petitioner was tallying with the contents of the agreement entered into between the parties which were proved by the respondent. In my view, there is thus no substance in all these submissions now made across the bar by the learned counsel for the petitioner.

44. Insofar as the issue of limitation is concerned, admittedly in this case there was no deed of guarantee executed by Mr.Kamal Kedia or Mr.Vishal Kedia and they were not impleaded as party respondents in the statement of claim filed before the learned arbitrator. In this case, the transaction of hire purchase agreement was in respect of 3 Ford Scorpio Cars. The respondent had taken re-possession of vehicle No.MH-06 - 4233 in New Delhi on 20 th May, 2000. The said vehicle was subsequently sold by the respondent and a credit in respect of the said vehicle was given to the petitioner.

45. Insofar as the submission of the learned counsel for the petitioner that the transaction between the petitioner and the respondent was a transaction of simplicitor loan and not hire purchase is concerned, the documents produced by the parties before the learned arbitrator and the correspondence exchanged between the parties i.e. the letter of credit opened by the bank for and on

behalf of the petitioner dated 31st January, 1996 in favour of Ford arbp631-09 Motor Company Limited clearly showed that the said letter of credit was opened on behalf of the petitioner under hire purchase agreement of the respondent.

46. The invoices raised by Ford Motor Company Limited referred to the letter of credit and hire purchase agreement between the parties. Packing letters / weight note also referred to hire purchase agreement between the parties. The respondent had also placed reliance on various financial documents of the petitioner which referred to the said hire purchase agreement entered into between the parties and also hire charges paid by the petitioner to the respondent in respect of the sale. A letter dated 11th November, 1997 addressed by the respondent to the petitioner also referred to the said hire purchase agreement No.96351 dated 31st January, 1996 for 3 Ford Cars which admittedly show the acknowledgement of the petitioner.

47. A perusal of the letter dated 11th May, 1999 addressed by the petitioner to the respondent also referred to various agreements including hire purchase agreement, which is the subject matter of this petition. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the transaction between the parties was a simple loan transaction and not hire purchase transaction. The learned arbitrator has considered all these documents as well as oral evidence led by the parties and has rendered a finding that the transaction was hire purchase between the parties.

48. A perusal of the balance sheet and other financial documents of the petitioner also clearly proved that there was hire arbp631-09 purchase agreement between the parties. The finance charges paid by the petitioner to the respondent under the hire purchase scheme were also reflected in the balance sheet of the petitioner. The petitioner has also admitted its liability towards the respondent in the balance sheet and other finance documents.

49. Insofar as the submission of the learned counsel for the petitioner that the respondent also in their account had showed the transaction as loan transaction and had shown the payment of interest and not hire charges is concerned, in my view there is no substance in the submission of the learned counsel for the petitioner.

The petitioner did not raise this issue before the learned arbitrator. Be that as it may, the petitioner has not been able to demonstrate anything in support of this contention even before this Court.

50. Insofar as the other submissions made by the petitioner which are referred to in the earlier paragraphs of this judgment are concerned, those submissions have been already dealt with by this Court in Arbitration Petition Nos.629 of 2009 and 630 of 2009 and are already rejected. For the reasons recorded by this Court in the judgment in Arbitration Petition Nos.629 of 2009 and 630 of 2009 while dealing with these submissions, those grounds which are reiterated by the petitioner in this petition are rejected.

51. After completion of the arguments by both the parties in Arbitration Petition No.633 of 2009, the learned counsel for the petitioner tendered a compilation of 8 judgments, though had agreed to

rely upon only one judgment. Be that as it may, I shall deal with those judgments as under :

arbp631-09

- i). The Supreme Court in case of Church Of Christ Charitable Trust & Educational Charitable Society vs. Ponnamman Educational Trust, (2012) 8 SCC 706,
- ii). The Supreme Court in case of Industrial Credit & Investment Corporation of India Limited vs. Grapco Industries Limited & Ors., (1999) 4 SCC 710,
- iii). The Delhi High Court in OMP No.80 of 2007, delivered on 25th October, 2007, in case of Jain Studios Limited vs. M/s.Maitry Exports Private Limited,
- iv). The Bombay High Court in Arbitration Petition No.974 of 2011 along with companion matter, in case of Sachin Shah vs. Hemant Shah & Ors., delivered 6th May, 2015,
- v). The Supreme Court in case of Centrotrade Minerals & Metals INC. vs. Hindustan Copper Limited, (2006) 11 SCC 245,
- vi). The Punjab & Haryana High Court in case of Tarun Bhargava vs. State of Haryana & Anr., AIR 2003 P. & H. 98,
- vii). The Delhi High Court in CM(M) No.822 of 2007 and CM No.8204 of 2007 in case of Krishan Lal vs. M/s.Meet Finance Company, delivered on 21st April, 2009 and
- viii). The Bombay High Court in Arbitration Petition No.868 of 2014, in case of B.E. Billimoria & Co. Ltd. vs. Raheja Universal Private arbp631-09 Limited, delivered on 27th October, 2015.

52. Insofar as the judgment of the Supreme Court in case of Church Of Christ Charitable Trust & Educational Charitable Society vs. Ponnamman Educational Trust, (2012) 8 SCC 706 is concerned, the said judgment is relied upon by the petitioner in support of the submission that the respondent had not made any averment in the statement of claim that the limitation for filing the claim against the petitioner was extended in view of the alleged admission of liability in a letter dated 11th May, 1997 addressed by the petitioner to the respondent, which pleading was to be in conformity with Order VII Rule 6 of the Code of Civil Procedure, 1908. A perusal of the statement of claim indicates that it was pleaded by the respondent that the claims made by the respondent were not barred by law of limitation. The petitioner had simpliciter denied the said plea made by the respondent and did not point out as to why the claims made by the respondent were barred by law of limitation.

53. Be that as it may, both the parties had urged their respective submissions on the issue of limitation before the learned arbitrator at length. It is not in dispute that the letter dated 11 th May,

1997 addressed by the petitioner to the respondent was taken on record and marked in evidence by the learned arbitrator which contained admission of liability on the part of the petitioner. The petitioner had neither disputed the existence of the said letter nor the contents thereof. The petitioner also did not dispute the contents of various financial documents, including the balance sheet and profit and loss account of the petitioner which were forming part of the record before the learned arbitrator.

arbp631-09

54. In my view, the learned arbitrator not being bound by the provisions of the Code of Civil Procedure, 1908 and in any event having given an opportunity to both the parties to make submissions and to lead evidence on the issue of limitation, this objection cannot be allowed to be raised by the petitioner at this stage. Under section 23 of the Arbitration & Conciliation Act, 1996, the claimant is required to state the facts supporting his claim, points at issue and the relief or remedy sought, and the respondent shall state his defence in support of those particular unless the parties had otherwise agreed as to the required elements of those statements. The judgment of the Supreme Court in case of Church Of Christ Charitable Trust & Educational Charitable Society (supra) thus would not assist the case of the petitioner.

55. Insofar as the judgment of the Supreme Court in case of Industrial Credit & Investment Corporation of India Limited vs. Grapco Industries Limited & Ors., (1999) 4 SCC 710, relied upon by the learned counsel for the petitioner is concerned, the Supreme Court in the said judgment has considered the issue whether the Debt Recovery Tribunal was bound to consider the powers of the Court as contained in the Code of Civil Procedure or could travel beyond the provisions of the Code of Civil Procedure though section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provided that the Tribunal was not bound by the provisions laid down by the Code of Civil Procedure. In my view, since the learned arbitrator had given an opportunity to both the parties to lead evidence and to make submissions on the issue of limitation, the petitioner cannot be allowed to urge this submission before this arbp631-09 Court. Be that as it may, the petitioner did not raise any plea before the learned arbitrator that the plea of the respondent in respect of limitation was vague and without particulars. The learned arbitrator has dealt with the letter dated 11th May, 1997 addressed by the petitioner to the respondent by holding that the claim made by the respondent was within the period of limitation and thus was not barred. The judgment of the Supreme Court in case of Industrial Credit & Investment Corporation of India Limited (supra) thus would not assist the case of the petitioner.

56. Insofar as the judgment of the Delhi High Court in OMP No.80 of 2007, delivered on 25th October, 2007 in case of Jain Studios Limited vs. M/s.Maitry Exports Private Limited relied upon by the learned counsel for the petitioner is concerned, there is no dispute about the proposition laid down by the Delhi High Court that the plea of limitation touches the jurisdiction of Court or Tribunal.

The learned arbitrator has rightly exercised his jurisdiction and has dealt with the submissions on limitation raised by both the parties. In my view, the judgment of the Delhi High Court in case of

Jain Studios Limited thus would not assist the case of the petitioner.

57. Insofar as the judgment of this Court in Arbitration Petition No.974 of 2011 along with companion matter, in case of Sachin Shah vs. Hemant Shah & Ors., delivered 6th May, 2015 is concerned, it is held by this Court that insofar as the challenge to the jurisdiction of the learned arbitrator is concerned, it is for this Court to examine it for itself and not merely to see if the learned arbitrator's own view of the challenge was a possible view underlined in case of other challenges on merits of the dispute. In my view upon arbp631-09 consideration of the documents on record and evidence led by the parties, this Court is independently of the view that the plea of jurisdiction raised by the petitioner before the learned arbitrator was thoroughly misconceived and is of the view that the learned arbitrator had jurisdiction to adjudicate upon the claims made by the respondent.

58. Insofar as the judgment of the Supreme Court in case of Centrotrade Minerals & Metals INC. vs. Hindustan Copper Limited, (2006) 11 SCC 245 relied upon by the learned counsel for the petitioner is concerned, in the said judgment the Supreme Court has dealt with the issue of jurisdiction while dealing with the foreign award under Part-II of the Arbitration & Conciliation Act, 1996. In my view, the said judgment would not assist the case of the petitioner and is clearly distinguishable in the facts and circumstances of this case.

59. Insofar as the judgment of the Punjab & Haryana High Court in case of Tarun Bhargava vs. State of Haryana & Anr., AIR 2003 P. & H. 98 relied by the learned counsel for the petitioner is concerned, in my view the said judgment would not assist the case of the petitioner in view of the fact that in the facts and circumstances of this case, the learned arbitrator has considered various documents of the petitioner clearly admitting that the transaction between the petitioner and the respondent was a hire purchase transaction. There is no dispute about the principles laid down by the Punjab & Haryana High Court in the said judgment. The said judgment however, would not assist the case of the petitioner in view of the admitted facts on record referred to aforesaid.

arbp631-09

60. Insofar as the judgment of the Delhi High Court in CM(M) No.822 of 2007 and CM No.8204 of 2007 in case of Krishan Lal vs. M/s.Meet Finance Company, delivered on 21st April, 2009 is concerned, there is no dispute that in the agreement entered into between the parties, there was a provision for repossession of the vehicle in case of default committed by the petitioner. The learned arbitrator has dealt with this issue in the impugned award and has held that the action of the respondent was valid and in accordance with the terms of the agreement. The judgment of the Delhi High Court in in case of Krishan Lal thus would not assist the case of the petitioner.

61. Insofar as the unreported judgment of this Court in Arbitration Petition No.868 of 2014, in case of B.E. Billimoria & Co. Ltd. vs. Raheja Universal Private Limited, delivered on 27th October, 2015, relied upon by the learned counsel for the petitioner is concerned, this Court in the said judgment has held that this Court cannot probe into the mind of the learned arbitrator as to what he must have considered while taking a particular view, if it is not reflected in the reasons rendered by him. It is held that this Court cannot permit a party to supplement the reasons rendered by the learned

arbitrator by relying upon the pleadings and documents which were not considered by the learned arbitrator and cannot assume that the learned arbitrator must have considered such pleadings, documents and submissions of the parties, which are not reflected in the award. There is no dispute about this proposition of law laid down by this Court in the said judgment. This Court while upholding the award rendered by the learned arbitrator has neither proposed nor arbp631-09 has considered any material on record which has not been dealt with by the learned arbitrator in the impugned award.

62. For the reasons recorded aforesaid and the reasons recorded in Arbitration Petition Nos.629 of 2009 and 630 of 2009 on the issues which are reiterated by the petitioner in this petition, in my view the petition is totally devoid of merits.

63. I therefore, pass the following order :-

a). Arbitration Petition No.631 of 2009 is dismissed.

b) . No order as to costs.

(R.D. DHANUKA, J.)