

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

CRP.No. 664 of 2007(E)

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AGAINST THE ORDER DATED 30/06/2007 IN IA.326/2007 IN  
OS.12/2007 of ADDL.MUNSIFF, KASARAGOD  
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REVN. PETITIONER: 1ST RESPONDENT/PLAINTIFF:  
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GOPAL N., AGED 38 YEARS,  
S/O. GANGAYYA POOJARI, RESIDING AT NOKKALA HOUSE,  
VORKADY VILLAGE, PAVOOR POST, KASARGOD.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: PETITIONERS/DEFENDANTS:  
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1. M/S. SRIRAM TRANSPORT FINANCE CO. LTD.,  
160-A/31, 2ND FLOOR, LAND MARK CENTRE,  
OPP. NEW BUS STAND, KASARGOD.
2. DHARNAPPA, AGED 65 YEARS,  
S/O. NANAYYA, RESIDING AT SHIVARAMA COMPOUND,  
ULLALA VILLAGE AND POST, MANGALORE TALUK, D.K.
3. M.N. HAMEED, AGED 45 YEARS,  
S/O. B.M. MOOSA, RESIDING AT GULF MANZIL,  
MUTTAM GATE, SHIRIYA VILLAGE AND POST,  
KASARGOD TALUK.

BY ADV. SRI.C.HARIKUMAR        )  
SRI.P.SANJAY                    ) for R1  
SRI.VIZZY GEORGE KOKKAT  
SRI.ARAVINDA KUMAR BABU T.K.  
SRI.M.PRADEEP RAO for R2

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 28/09/2007 ALONG WITH C.R.P.NO.665 OF 2007 AND  
CONNECTED CASES, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:

KSS

**M.N.KRISHNAN, J**

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**C.R.P.Nos.664, 665,698,699,700,701,702,  
746 & 832 OF 2007**

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**Dated this the 28th day of September 2007**

**ORDER**

C.R.P.No.664 of 2007 is preferred against the order of the Addl.Munsiff, Kasargod in I.A.No.326/2007 in O.S.No.12/2007. Defendants in the suit filed an application contending that there is an arbitration clause in the agreement entered into between the parties and therefore the dispute has to be referred to the Arbitrator. The Plaintiff in the suit resisted the same on the ground that the agreement relied upon is forgery committed by the petitioner with ulterior motives and therefore the arbitration cannot be resorted to.

2. C.R.P.No.665 of 2007 is preferred against the order of the Addl.Munsiff, Kasargod in I.A.No.761/2007 in O.S.No.129/2007. There also the petition is filed by the defendants in the suit contending for the position that the matter is arbitrable and therefore it has to be referred to the Arbitrator and the plaintiff in turn would contend that the documents produced are the creation of forgery and therefore the civil suit is maintainable. In rest of the cases also the contentions are the same.

3. The learned Munsiff in his order considered the arbitration agreement, the relevant provisions of the Arbitration Act and the contention of the plaintiffs and held that there is an agreement which contains an arbitration clause and therefore the subject matter of the suits are to be referred to the Arbitrator. The crux of the contention of the plaintiffs is on the basis of a decision of the Apex Court reported in ***India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd.***(AIR 2007 SC 1376). The Apex Court held that “it is also no doubt true that where existence of an arbitration agreement can be found, apart from the existence of the original agreement, the Courts would construe the agreement in such a manner so as to uphold the arbitration agreement. However, when a question of fraud is raised, the same has to be considered differently. Fraud, as is well known, vitiates all solemn acts. A contract would mean a valid contract; an arbitration agreement would mean an agreement which is enforceable in law”. In that case before the Apex Court, it was strongly argued that even the original of the agreement was not produced and there was fraud of grave magnitude and that the arbitration agreement is vague as it contemplates both litigations as also an arbitration. So unless the court is prima facie satisfied that there is an element of fraud which vitiates the contract, one cannot jump to the conclusion that the matter cannot be

referred to arbitration. The purport of the Arbitration and Conciliation Act is to refer the matter to the Arbitrator so as to help the parties in arriving at an early settlement of the disputes. It is not intended by merely incorporating the word 'fraud' or 'forgery' it should not be declined and the powers under the Act have to be exercised.

4. I have perused the counter statement filed in the matter and also the plaint. In the plaint, the plaintiff admits the transaction with the defendants. It is also averred that a blank set of agreements was also got executed from the plaintiffs by the defendants along with blank signed cheques and further stated that though the agreement thus executed by the plaintiffs is styled as hire purchase agreement, it is only a loan agreement as none of the conditions of the hire purchase is incorporated therein. The transaction is only based upon one document. There is an admission that document has been executed. The contention that blank documents are executed cannot be taken at face value. Therefore, prima facie, the materials would go to show as held by the court below that there is an agreement entered into between the parties. These are all loans secured for the purpose of purchase of vehicles. There are standard forms and standard method of applying and getting the amount. It is admitted by the plaintiffs that the vehicles had been purchased with the fund supplied by the defendants in

the suit. So the preponderance of probabilities would reveal that there is an agreement entered into between the parties. A mere averment that it is vitiated by fraud or forgery need not detain us long for the reason that fraud cannot be inferred from conjectures and surmises. Further, Order 6 Rule 4 of the C.P.C. contemplates specific element of fraud to be pleaded because it goes into the root of a transaction. As held by the Apex Court, fraud nullifies the solemnness of a true transaction and therefore it has to be proved and pleaded meticulously. From the set of pleadings and the documents available, I concur with the court below that there is an agreement entered into between the parties and there is no material available to show that it is vitiated by fraud and therefore the parties are bound by the terms of the agreement. When it is so, clause 10.14 of the agreement would show that the disputes are to be referred to the Arbitrator as contemplated therein. Therefore I concur with the finding of the court below that the matter has to be referred to the Arbitrator.

5. On account of the stay passed by this court defendants have not initiated proceedings before the Arbitrator. If there is any grievance for the plaintiffs in these cases, they are entitled to some relief from the Arbitrator in the form of an interim order as well.

6. Therefore in order to move the Arbitrator and in order to facilitate

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the plaintiffs in all these cases to move for some reliefs, I direct the defendants in the suit not to resort to any recovery proceedings for a period of one month from today.

C.R.Ps are disposed of as above.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**