

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 286 OF 2009
(Arising out of S.L.P.(C) No.12422/2008)

M/s. Tata Finance Ltd. now Tata Motors Ltd.

...Appellant(s)

Versus

N. Poongodi & Anr.

...Respondent(s)

O R D E R

Leave granted.

In this case, vide the impugned judgment, the Monopolies and Restrictive Trade Practices Commission ('Commission' for short) has dismissed the application, C.A.No.7/2007, filed by the appellant herein for deciding the issue of maintainability of the Compensation Application bearing No. M.A.No.7/2007 as a preliminary issue, hence, this Civil Appeal.

Appellant-Company is a non-banking financial institution. Respondents had entered into four hire purchase agreements with the appellant, the details of which are given in synopsis 'D' to the S.L.P. paper book. Disputes arose between the parties which went to arbitration. Two Awards were given. Ultimately the matter came to this Court by way of Special Leave Petition and the Awards stood confirmed. In the process, a period of almost ten years elapsed. Pursuant

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to the Awards, execution proceedings, including insolvency proceedings, have been taken. We do not wish to comment about those proceedings as the matter is sub judice.

Suffice it to state that after ten years, the Commission has been moved claiming damages in which appellant herein raised the contention that it should decide the question of maintainability of the above Compensation Application No.7/2007 as a preliminary issue.

According to the appellant, the said Compensation Application No.7/2007 amounts to abuse of process and it is this issue which the appellant wanted the Commission to be decided as a preliminary issue.

When the matter came for hearing, we have examined the voluminous record threadbare. After examining the entire record, without commenting on the merits of the case, we are of the view that the Commission has erred in holding, vide para 11, that the question of maintainability of Compensation Application No.7/2007 is a question of fact and law which can be decided only when the evidence is led. It is important to note that in this case what the Commission ought to have done is to have examined the scope of the arbitration proceedings. It ought to have examined the pleadings before the Arbitrator before coming to the conclusion as stated hereinabove vide para 11 of the impugned judgment. The bare fact remains that

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after ten years and after the parties have gone through the entire gamut of the various proceedings, the matter has been moved before the Commission alleging unfair trade practice. There are various nuances of the concept of abuse of process, which includes

moving the Commission after ten years. None of these aspects have been examined by the Commission.

On the facts and circumstances of this case, we are of the view that the Commission should frame and decide the issue of the Complaint being an abuse of the process as a preliminary issue before proceeding further in the matter. We do not wish to express any opinion on that issue or on the merits of the case. We make it clear that all contentions on the preliminary issue are kept open. Any observation made in the impugned judgment as well as herein on merits will not bind the Commission while deciding the preliminary issue.

Before concluding, we are constrained to observe that certain allegations have been made in the Compensation Application against the Chairperson of the Appellant Company. It would be open to the Commission to examine at the threshold whether those allegations have any relevance to the Complaint filed before the Commission and, if it comes to the conclusion after hearing the parties that such allegations have no relevance to the Compensation Application, then, it may consider ordering deletion of such allegations.

Subject to what is stated hereinabove, the impugned

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judgment is set aside and the matter stands remitted to the Monopolies and Restrictive Trade Practices Commission to frame and decide the above issue as a preliminary issue within a period of four months.

Civil appeal is allowed accordingly with no order as to costs.

.....J.
(S.H. KAPADIA)

**New Delhi,
January 15, 2009.**

(H.L. DATTU)

.....J.