

OMP (I) (Comm) No. 45/2020
Bansal Credits vs Lalit Kumar

14.07.2020

Pr: Sh. Vikas Sehgal, counsel for petitioner.

Fresh petition u/s 9 of Arbitration & Conciliation Act for appointment of receiver as an interim measure was received by way of assignment through online yesterday. Today proceedings were conducted through video conferencing. The copy of the agreement placed on record shows that arbitration clause exists between the parties in case of any dispute and the jurisdiction will be of Delhi court, thus this court can deal with this petition.

According to the averments, the respondent obtained a vehicle loan from the petitioner company on 14.07.2018 amounting to Rs.6,00,000/- which was to be paid in 33 installments of Rs.22,800/- each. Respondent paid only 9 installments and is in default of 12 installments as on 14-3-2020. After availing the loan facility, the respondent failed to pay the monthly installments as per schedule despite several reminders, visits and repeated requests made by the petitioner company. According to the petitioner, due to non payment of loan installments, the amount was recalled by giving a notice dated 28.01.2019.

The purchased vehicle make **LP712 BUS bearing Engine No. 817071 and Chassis no. 12354 registration No. UK-07-PA-1642** was hypothecated with the petitioner company.

As per agreement, respondent was under obligation to surrender the vehicle in case of non payment but he has failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the respondent.

Petitioner company has also placed on record statement of account to show the defaults committed by the respondent in payment of the installments. Counsel for the petitioner further requested for appointment of **Sh. Amit Kumar Garg**, AR of the petitioner company for seizure of the hypothecated vehicle on the ground that for the



better co-ordination and immediate and quick action, the official of the company be appointed as receiver.

Keeping in view the defaults committed by the respondent in making payment of installments and apprehension of the petitioner company that respondent may conceal or dispose off the vehicle in question, I deem it appropriate and take it as a fit case where the receiver is to be appointed at this stage for taking possession of the vehicle in question. Accordingly, petitioner company is permitted to take into possession of the vehicle bearing no. **LP712 BUS bearing Engine No. 817071 and Chassis no. 12354 registration No. UK-07-PA-1642** from the possession of the respondent and **Sh. Amit Kumar Garg**, AR of the petitioner company is authorized to seize the above mentioned vehicle and take its custody by appointing him as receiver. He is permitted to take the help of the police if required. However, it is ordered that he shall also comply with following terms and conditions:

1. The vehicle shall be seized in between 8:00 a.m. to 8:00 p.m. only.
2. It shall not be seized when is moving on the road.
3. The receiver shall seize the vehicle personally and shall not delegate this power to anyone.
4. The respondent/occupant of the vehicle shall be permitted to remove their belongings from the vehicle in question at the time of seizure.
5. At the time of seizure of the vehicle, the signature of an independent person of the locality or nearby area or police official shall be obtained on the possession report.
6. The copy of the possession report shall be given to the respondent/occupant of the vehicle at the spot itself. The date and time of seizure of the vehicle must be clearly mentioned in the report.
7. The detailed condition of the vehicle as well as its accessories shall be noted in the possession report and photographs of the vehicle shall be also taken at the time of seizure.
8. The vehicle in question shall not be disposed off or sold without prior permission of the court and shall be kept in safe custody.



9. The receiver shall be under the control of the court and is required to file the report in the court within three days of the seizure of the vehicle.

10. If the vehicle is not traced out or could not be seized due to any reasons then report giving reasons shall be filed in this regard on the next date of hearing.

It is also warned to the receiver that he shall be personally liable in case of violation of any of the above conditions.

Since, at the specific request of the petitioner company, its employee is appointed as receiver so an obligation is also put upon the petitioner to ensure that its employee appointed by the court as receiver must comply with above terms and conditions otherwise the appointment order of the receiver shall be cancelled or shall not be extended or the seized vehicle can ordered to be returned to the respondent unconditionally without any payment.

It is also made clear to the petitioner that this is an interim measure and the order of appointment of receiver shall remain in force only till next date of hearing unless again extended.

If the vehicle could not be seized by the next date of hearing then this interim order may not be extended further so the receiver must take the sincere efforts for tracing out and seizing of the vehicle.

Copy of this order be given to the AR/counsel for the petitioner company for handing over the same to the receiver.

According to the petition, the arbitration proceedings have not been initiated so far despite sending recall of loan notice on 28-1-2019 so it is further directed to the petitioner company to initiate arbitration proceedings by issuing the notice to the respondent separately, appointing arbitrator and by taking necessary steps within fifteen days from today, failing which this order shall be revoked.

Issue notice of this petition and misc. application also to the respondent for next date of hearing i.e. **09-9-2020** on PF/RC through speed post, email and whatsapp address, if available as well as through dasti service by the receiver.

(Ashwani Kumar Sarpal)

District Judge, Commercial Court-05 (Central)

Dt. 14.07.2020

CS (Comm) No. 957/2020
ICICI Bank Ltd. vs Harshpreet Singh Walia

14.07.2020

Pr : Ms. Barkha Sharma, counsel for plaintiff.

Fresh suit for recovery was received by way of assignment through online today. It be checked and registered. Counsel for the plaintiff filed court fees of Rs.7370.40. Reader is directed to report whether the court fees paid is correct or not.

An application under Order 40 Rule 1 CPC for appointment of the receiver is moved alongwith the suit for taking possession of the hypothecated vehicle. Counsel for the plaintiff relied upon the case law **M/s ICICI Bank vs Randhir Singh FAO 321/2018 decided on 06.08.2018 by Delhi High Court.**

It is stated that the defendant took a loan for purchase of the vehicle and he committed defaults in payment of the installments. According to the counsel out of 36 installments, only 20 installments were paid and the last installment was paid on 27.1.2020 and by that time two installments were already in default and thereafter no payment is made due to which the loan amount has been recalled by issuing a legal notice and as per agreement defendant is under obligation to surrender the vehicle in case of non payment but he has failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the defendant.

Plaintiff bank has also placed on record statement of account to show the defaults committed by the defendant in payment of the installments. The vehicle number **DL-5CP-7708 make HYUNDAI CRETA/SX PLUS 1.6D** had been purchased by the defendant from the loan amount and lateron hypothecated to the plaintiff bank.

Counsel for the plaintiff further requested for appointment of **Sh. Yogesh Arora**, representative/official of the plaintiff bank as a receiver on the ground that for the better co-ordination and immediate and quick action, the official of the bank be appointed as receiver.



Keeping in view the defaults committed by the defendant in making payment of installments and apprehension of the plaintiff bank that defendant may conceal or dispose off the vehicle in question, I deem it appropriate and take it as a fit case where the receiver is to be appointed at this stage for taking possession of the vehicle in question. Accordingly, application under Order 40 Rule 1 CPC is allowed for the time being and plaintiff bank is permitted to take into possession of the vehicle bearing no. **DL-5CP-7708 make HYUNDAI CRETA/SX PLUS 1.6D** from the possession of the defendant and **Sh. Yogesh Arora**, representative/official of the plaintiff bank is authorized to seize the above mentioned vehicle and take its custody. He is permitted to take the help of the police if required. However, it is ordered that he shall also comply with following terms and conditions:

1. The vehicle shall be seized in between 8:00 a.m. to 8:00 p.m. only.
2. It shall not be seized when is moving on the road.
3. The receiver shall seize the vehicle personally and shall not delegate this power to anyone.
4. The defendant/occupant of the vehicle shall be permitted to remove their belongings from the vehicle in question at the time of seizure.
5. At the time of seizure of the vehicle, the signature of an independent person of the locality or nearby area or police official shall be obtained on the possession report.
6. The copy of the possession report shall be given to the defendant/occupant of the vehicle at the spot itself. The date and time of seizure of the vehicle must be clearly mentioned in the report.
7. The detailed condition of the vehicle as well as its accessories shall be noted in the possession report and photographs of the vehicle shall be also taken at the time of seizure.
8. The vehicle in question shall not be disposed off or sold without prior permission of the court and shall be kept in safe custody.
9. The receiver shall be under the control of the court and is required to file the report in the court within three days of the seizure of the vehicle.



10. If the vehicle is not traced out or could not be seized due to any reasons then report giving reasons shall be filed in this regard on the next date of hearing.

It is also warned to the receiver that he shall be personally liable in case of violation of any of the above conditions.

Since, at the specific request of the plaintiff bank, its officer is appointed as receiver so an obligation is also put upon the plaintiff to ensure that its employee appointed by the court as receiver must comply with above terms and conditions otherwise the appointment order of the receiver shall be cancelled or shall not be extended or the seized vehicle can ordered to be returned to the defendant unconditionally without any payment.

It is also made clear to the plaintiff that this is an interim measure and the order of appointment of receiver shall remain in force only till next date of hearing unless again extended.

If the vehicle could not be seized by the next date of hearing then this interim order may not be extended further so the receiver must take the sincere efforts for tracing out and seizing of the vehicle.

Copy of this order be given to the AR/counsel for the plaintiff bank for handing over the same to the receiver.

Issue notice of the suit and application also to the defendant for next date of hearing i.e. 09.09.2020 on PF/RC through speed post, email and whatsapp address, if available as well as through dasti service by the receiver.



(Ashwani Kumar Sarpal)
District Judge – Commercial Court-05 (Central)
14.07.2020

14.07.2020

Pr: Sh. Deepak Kaushik, counsel for plaintiff.

Fresh suit for recovery was received by way of assignment through online today. It be checked and registered. Counsel for the plaintiff filed court fees of Rs.9,195/-. Reader is directed to report whether the court fees paid is correct or not.

An application under Order 40 Rule 1 CPC for appointment of the receiver is moved alongwith the suit for taking possession of the hypothecated vehicle. Counsel for the plaintiff relied upon the case law **M/s ICICI Bank vs Randhir Singh FAO 321/2018 decided on 06.08.2018 by Delhi High Court.**

It is stated that the defendants took a loan for purchase of the vehicle and they committed defaults in payment of the installments. According to the counsel, out of 23 installments, only 10 installments were paid and the last installment was paid on 24.09.2019 and thereafter no payment is made due to which the loan amount has been recalled by issuing a legal notice and as per agreement defendants are under obligation to surrender the vehicle in case of non payment but they have failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the defendants.

Plaintiff bank has also placed on record statement of account to show the defaults committed by the defendants in payment of the installments. The vehicle number **UP-16FT-6056 make EICHER PRO 1075** had been purchased by the defendants from the loan amount and lateron hypothecated to the plaintiff bank.

Counsel for the plaintiff further requested for appointment of Sh. Ajeet Singh Chauhan or Sh. Deepak Kumar or Sh. Asad Abbas, representative/official of the plaintiff bank as a receiver on the ground that for the better co-ordination and immediate and quick action, the official of the bank be appointed as receiver.

Keeping in view the defaults committed by the defendants in making payment of installments and apprehension of the plaintiff bank that defendants may conceal or



dispose off the vehicle in question, I deem it appropriate and take it as a fit case where the receiver is to be appointed at this stage for taking possession of the vehicle in question. Accordingly, application under Order 40 Rule 1 CPC is allowed for the time being and plaintiff bank is permitted to take into possession of the vehicle bearing no **UP-16FT-6056 make EICHER PRO 1075** from the possession of the defendants and **Sh. Ajeet Singh Chauhan**, representative/official of the plaintiff bank is authorized to seize the above mentioned vehicle and take its custody. He is permitted to take the help of the police if required. However, it is ordered that he shall also comply with following terms and conditions:

1. The vehicle shall be seized in between 8:00 a.m. to 8:00 p.m. only.
2. It shall not be seized when is moving on the road.
3. The receiver shall seize the vehicle personally and shall not delegate this power to anyone.
4. The defendant/occupant of the vehicle shall be permitted to remove their belongings from the vehicle in question at the time of seizure.
5. At the time of seizure of the vehicle, the signature of an independent person of the locality or nearby area or police official shall be obtained on the possession report.
6. The copy of the possession report shall be given to the defendant/occupant of the vehicle at the spot itself. The date and time of seizure of the vehicle must be clearly mentioned in the report.
7. The detailed condition of the vehicle as well as its accessories shall be noted in the possession report and photographs of the vehicle shall be also taken at the time of seizure.
8. The vehicle in question shall not be disposed off or sold without prior permission of the court and shall be kept in safe custody.
9. The receiver shall be under the control of the court and is required to file the report in the court within three days of the seizure of the vehicle
10. If the vehicle is not traced out or could not be seized due to any reasons then report giving reasons shall be filed in this regard on the next date of hearing.



It is also warned to the receiver that he shall be personally liable in case of violation of any of the above conditions.

Since, at the specific request of the plaintiff bank, its officer is appointed as receiver so an obligation is also put upon the plaintiff to ensure that its employee appointed by the court as receiver must comply with above terms and conditions otherwise the appointment order of the receiver shall be cancelled or shall not be extended or the seized vehicle can ordered to be returned to the defendants unconditionally without any payment.

It is also made clear to the plaintiff that this is an interim measure and the order of appointment of receiver shall remain in force only till next date of hearing unless again extended.

If the vehicle could not be seized by the next date of hearing then this interim order may not be extended further so the receiver must take the sincere efforts for tracing out and seizing of the vehicle.

Copy of this order be given to the AR/counsel for the plaintiff bank for handing over the same to the receiver.

Issue notice of the suit and application also to the defendants for next date of hearing i.e. 09.09.2020 on PF/RC through speed post, email and whatsapp address, if available as well as through dasti service by the receiver.



(Ashwani Kumar Sarpal)
District Judge – Commercial Court-05 (Central)
14.07.2020