

IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of Decision: 17th March, 2008**

+ CM(M) No.350/2008

GE CAPITAL TRANSPORTATION ... Petitioner
! Through: Mr. Anupam Srivastava, Advocate

versus

\$ SHRI SHAMSUDDIN ... Respondent
Through:

CORAM:

* **HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment.
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?

* **Veena Birbal, J. (Oral)**

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Allowed, subject to all just exceptions.

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The case of the petitioner is that on 28.02.2006, respondent entered into a loan agreement bearing No. TNGURRCVZ00236299 with petitioner in respect of vehicle bearing description as LPT 2515. The loan agreement was for Rs. 10,49,000/- and loan was to be repaid in 48 monthly

instalments of Rs.26,750/- each. It is alleged that the respondent in all has paid 8 instalments on the date of filing of original miscellaneous petition under Section 9 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "The Act") before learned District Judge and 16 instalments are due. As per petitioner, total amount payable by respondent on the date of institution of aforesaid petition was Rs.10,38,444.00/- inclusive of interest in terms of agreement. Petitioner has also given a legal notice of termination of loan agreement to respondent on 22.11.2007. It is averred that as per clause 13 (g) of the loan agreement, all the disputes/differences between the parties have to be settled by arbitration. Further, petitioner has also stated that it would invoke arbitral clause as per the agreement. It is stated that petitioner had filed the petition under Section 9 of the Act for an ex parte appointment of "receiver" for taking possession of aforesaid 'vehicle' so that respondent may not transfer the 'vehicle' in order to defeat the interest of petitioner.

Learned ADJ vide impugned order dated 29th February, 2008 did not accede to the request of petitioner and issued notice of the said petition to the respondent returnable for 10th

April, 2008. Aggrieved with the said order, present petition is filed.

Counsel for petitioner has contended that on the date of filing of petition under Section 9 of the Act total outstanding amount payable by respondent was Rs. 10,38,444/-. It is contended that by refusing to grant order of ex parte appointment of receiver, entire purpose of filing the petition stands frustrated as respondent would alienate the vehicle in question in the meanwhile. Learned counsel for petitioner has relied upon unreported judgment decided by Division Bench of this Court in FAO(OS) No. 117/2002 decided on 3rd April, 2002 in support of his contention.

Learned counsel for petitioner has also relied upon another unreported judgment of this Court in FAO No.42/2007 titled ICICI Bank Limited v. Kaptan Singh, decided on 5.2.2007 wherein aforesaid judgment of Division Bench was followed by learned Single Judge and submitted that in almost similar facts this Court appointed ex-parte receiver for taking the possession of the vehicle for protecting the interest of the petitioner.

Learned counsel for petitioner has also relied upon judgment of Hon'ble Supreme court in Sundaram Finance Ltd. v. NEPC India Ltd. (1999) 2 SCC 479, wherein it is held that

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Court can pass interim orders before the commencement of arbitral proceedings and that before passing interim order Court must be satisfied about existence of arbitration agreement and the applicant's intention to take the matter to arbitration. Court must also pass an additional order to ensure that effective steps are taken by the applicant for commencing the arbitration proceedings.

Perusal of record shows that Learned ADJ has not acceded to the request of petitioner for passing an ex parte order appointing the receiver in the matter on the ground that the petitioner has filed true copies of the documents and have not shown/filed the original documents for the appreciation of the court and that the officer who is sought to be appointed receiver cannot be said to be an employee of the petitioner as ID card does not name the person who has issued the same. It is also stated in the impugned order that the notice of termination of agreement was given in 22.11.2007 and despite that no steps have been taken for appointment of arbitrator.

During arguments, counsel for petitioner has submitted that he has got the original documents i.e loan agreement etc. in support of his case. Petitioner has also got sufficient material to establish that Sh. Ramandeep is an officer of the petitioner

company. It is contended that his prayer before learned ADJ is not restricted to appointment of Sh. Ramandeep as the receiver but court can appointment any other person as receiver whom it considers fit. Learned counsel has also submitted that arbitration proceedings will be initiated at once. In view of the above submissions made, the impugned order is set aside and matter is remanded back to Learned ADJ who will re-examine the request of the petitioner for passing an ex parte order for appointment of receiver in the matter for the purpose as is prayed. Petitioner shall show the original documents for appreciation of the court and shall file necessary documents to establish the identity of concerned officer. Learned ADJ will pass the order afresh without being influenced of any observation made herein. Learned ADJ will be at liberty to add conditions to safeguard the interests/rights of parties. Copy of the order be given dasti. Petitioner to appear before concerned learned ADJ on 25th March, 2008. Copy of the order be also sent there.

Petition stands disposed of accordingly.

Veena Birbal, J.

March 17, 2008
kks/srb