

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 9.4.2009
Date of Order: April 20, 2009

OMP No. 640/2008 & OMP No. 641/2008

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20.4.2009

**GE Capital Transportation Financial
Services Ltd.**

... Petitioner

Through: Mr. Anupam Srivastava, Advocate

Versus

M/s Raj Tours Private Limited

... Respondent

Through: Mr. Ravi Kumar Aggarwal, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By these two applications/petitions under Section 9 of the Arbitration & Conciliation Act, 1996, the petitioner has prayed for appointment of a receiver to take possession of the assets let on loan to the respondent with liberty to the receiver to seek assistance of the local police in case any obstruction is put by the respondent in seizing the assets. The petitioner also prayed for restraining respondent and its employees etc. from wasting, damaging, alienating, selling, removing and disposing of the assets in the meantime and permitting the receiver to sell the vehicle.

2. The case of the petitioner is that the respondent approached the petitioner with a request for acquisition of Volvo B7R vehicles (bus) on loan. This request was considered by the petitioner. The respondent entered into loan agreements on 2nd January 2006 with the petitioner and under these agreements, the petitioner financed the Volvo B7R vehicles, which were registered as KA-01B 7498 and KA-01B 7500. The cost of the each vehicle was Rs.42,19,000/-. Under the agreements, the respondent was to pay 48 Equated Monthly Installments (EMIs) to discharge his liability. The first installment was of Rs.2,08,940/- and the subsequent installments were of around Rs.1,40,000/-. The installments fell due for payment in terms of the agreement/contract on 15th day of each calendar month starting from 15th February, 2006 and the last installment was to become due on 15th December, 2009. The respondent failed to honour the commitment in terms of the agreement and did not pay the installments. In view of failure of the respondent to pay the installments, the respondent became liable to pay liquidated damages/compensation for all overdue installments @ 36% p.a. till the payment thereof, in terms of clause 10(a) of the agreements. Amounts of Rs.22,80,818/- and Rs.22,79,314/- became due for payment as on the date of filing this application. Under clause 13(g) of the agreement, all disputes and differences or claims arising out of the agreement were to be referred to the arbitration in terms of the Arbitration & Conciliation Act, 1996. It is submitted that under clause 10(b) of the contract, the petitioner was entitled to exercise its right of removing and retaking the

possession of the assets itself or through its servants. The petitioner submitted that the respondent was not paying installments; several cheques issued by the respondent had got dishonored and the assets of the petitioner were in danger of being damaged or alienated by the respondent, therefore, this application was made seeking the above reliefs.

3. In reply, the respondent had stated that this Court had no territorial jurisdiction to entertain this petition. The transaction between the parties took place at Mumbai. The respondent was having its office in Mumbai. The installments were payable at Mumbai, no part of cause of action had arisen in Delhi so Delhi Court would have no jurisdiction. On merits, it was stated that the petitioner has relied on contract dated 2.1.2006 but has concealed material part of the contract viz. schedules and annexures and those have not been filed in the Court and the petitioner has failed to make out a case for appointment of the receiver.

4. Learned Counsel for the petitioner argued that as per contracts between the parties the petitioner was entitled to repossess the vehicle in case of default in payments of the installments. In the present case, there had been continuous default by the respondent and the respondent, despite giving opportunities, had not paid the installments. The learned Counsel pointed out to the statement of accounts showing that not one but several cheques of the respondent got dishonored and the respondent had not paid the amount in lieu of

the dishonored cheques. On the other hand, the learned Counsel for the respondent submitted that this Court had passed status quo order and the respondent undertakes to maintain status quo in respect of the assets i.e. Volvo buses. The respondent shall not dispose of or transfer the assets to any third party so as to secure the interest of the petitioner till the disposal of the arbitration and respondent shall also take steps to see that the assets are not wasted damaged or destroyed except normal wear and tear. He further argued that the law regarding receiver is laid down under Order 40 Rule 1 CPC and submitted that where a defendant gives undertaking to maintain status quo there was no necessity of appointing receiver. He relied upon Hari Mohan Sharma and Ors. v. CSR Poultry Research and Breeding Farm AIR 1993 (Delhi) 293 and submitted that unless there was an apprehension that the property would be wasted, damaged or destroyed, the court should not appoint receiver.

5. A perusal of agreements between the parties would show that the agreements between the parties were entered at Delhi, where the registered office of the petitioner is located. The agreements also provide that the parties agreed that the Courts at Delhi shall have sole and exclusive jurisdiction. The subject matter in the petition in this case is only movable property and therefore provision of Sections 16, 17 & 18 of CPC for determination of territorial jurisdiction would not be applicable. Since, it is not a case of wrong done to a person or to assets Section 19 CPC would also not apply. The present case is in

respect of breach of contract and therefore Section 20 CPC shall apply and the suit can be filed either under Section 20(a) or 20(b) or under Section 20(c) CPC. Since, the contract between the parties was entered at New Delhi and this contract has been breached, part of cause of action arose within the jurisdiction of this court. Since the petitioner had option to file the suit either in Delhi or at the place where defendant resided, this Court would therefore have territorial jurisdiction.

6. The agreements between the parties provided remedies on default in payment of installments. One of the remedies provided under Clause 10(b) of the contract is that the petitioner can take possession of the loan assets either with or without the intervention of the Court from the debtor. In *Orix Finance (India) Ltd. v. Jagmandar Singh and Anr.* (2006) 2 SCC 598 Supreme Court laid down law regarding taking of possession by financier of the financed vehicle as under:

“If agreements permit the financier to take possession of the financed vehicles, there is no legal impediment on such possession being taken. Of course, the hirer can avail such statutory remedy as may be available. But mere fact that possession has been taken cannot be a ground to contend that the hirer is prejudiced. Stand of learned counsel for the respondent that convenience of the hirer cannot be overlooked and improper seizure cannot be made. There cannot be any generalization in such matters. It would depend upon facts of each case. It would not be, therefore, proper for the High Courts to lay down any guideline which would in essence amount to variation of the agreed terms of the agreement.”

7. The plea of the respondent that the petitioner should be satisfied with the status quo order of this Court and this Court should not issue order for appointment of receiver is not tenable. The judgment relied upon by the respondent is of no help. In that case, the property involved was immovable property. In case of immovable property, the value of the property rises day by day while in the present case, the property involved are Volvo buses, in use and possession of the respondent. By putting the buses to reckless use, the respondent can bring down the value of the buses substantially and claim that it was normal wear and tear of the buses. The respondent is not making payment of the due installments and had paid only few installments in the beginning and thereafter stopped making payments of the installments, neither surrendered the buses. In case the respondent was not earning enough to pay the installments, the buses should have been sold to discharge the liability. The respondent is very much using the buses and plying the buses and simultaneously not paying the installments. I consider under these circumstances, the plea of the respondent that since a status quo order has been passed and there was no necessity of appointment of receiver must fail.

8. The petitioner could have seized the buses of its own in view of the above judgment of Supreme Court and the clause provided in the agreements. The only precaution which the petitioner had to take was that he should not have used excess force and should have seized the buses peacefully. Instead of

seizing the buses itself, the petitioner has approached this Court for appointment of receiver. I consider that the prayer made by the petitioner is not unjustified. The balance of convenience lies in favour of the petitioner. It is also admitted by the respondent that respondent has failed to pay the installments. Prima facie the petitioner has a good case.

9. I therefore allow these petitions and appoint petitioner's officer Mr. Mahesh Rai as receiver to take possession of the Volvo buses no. KA-01B 7498 and. KA-01B 7500. Mr. Mahesh Rai, after taking possession of the buses shall prepare a seizure report of the buses showing the condition of the buses. He shall also take photographs from outside and inside the buses. A copy of the seizure reports shall be filed in the Court. Buses shall be retained by the receiver till further orders are obtained from the arbitrator appointed under the arbitration clause or till passing of award. In case, any resistance is put by the respondent in seizure of the buses, the receiver shall be at liberty to take help of the local Police Station where buses are found stationed. The receiver shall take possession of the buses, wherever the buses are found.

The petitions stand disposed of.

April 20, 2009
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SHIV NARAYAN DHINGRA, J.