

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO.657 OF 2014**

Kotak Mahindra Bank Limited

... Petitioner

Versus

Nizam S Ladji & Ors

... Respondents

Ms. Siddhi Doshi i/b Advocate Vinod Juwale for the Petitioner.

None for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATED: 27TH JANUARY, 2015

P.C.:

1. The above Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an Affidavit proving service dated 23.01.2015 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan Agreement dated 29th May, 2012, the Petitioner provided a loan of Rs.5,10,000/- (Rupees Five Lakhs Ten Thousand Only) to the first Respondent for purchase of Vehicle – EICHER TERRA 16 TIPPER more particularly described in Exhibit- E to the Petition. By a Deed of Hypothecation also dated 29th May, 2012 the said Vehicle – EICHER TERRA 16 TIPPER was hypothecated with the Petitioner by the Respondent No. 1.

3. The Loan amount of Rs. 5, 10,000/- was repayable by the Respondents to the Petitioner with interest @9.5% per annum in 18 monthly installments commencing from 5th July, 2012 and ending on 5th December, 2013.

4. Respondent No.2 has guaranteed the due repayment of the loan. Clause 5.1 of the Agreement provides for the events of default; Clause 5.3 for the consequences of default; Clause 5.3 (b) provides for the rights of the Petitioners on default including repossession of the asset. Clause 11.16 & 11.17 provides for arbitration. There has

been a default on the part of the Respondents. The Respondents therefore became liable to pay to the Petitioner a sum of Rs 5, 90,310.77/- (Rupees Five Lakhs Ninety Thousand Three Hundred Ten and Seventy Seven Paise only) as on 15.11.2013. The Petitioner therefore invoked the arbitration clause in the Agreement dated 29th May, 2012.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Vehicle – EICHER TERRA 16 TIPPER, more particularly described in Exhibit “E” to the Petition. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements / submissions made by the Petitioner in the Petition should not be accepted. Since the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the hypothecated Vehicle – EICHER TERRA 16 TIPPER. The appointment of the Receiver is necessary in order to ensure that the hypothecated Vehicle – EICHER TERRA 16 TIPPER are not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass interim measures of protection. Hence, the following order:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the Vehicle – EICHER TERRA 16 TIPPER, more particularly described in Exhibit “E” to the Petition, with direction to take forcible physical possession of the said Vehicle – EICHER TERRA 16 TIPPER with police assistance, if required, and without any prior notice to the Respondents;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as an agent of the Receiver in respect of the said Vehicle – EICHER TERRA 16 TIPPER. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver’s communication/letter to exercise such an option. In the event of the respondent/s being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to deposit of security and payment of royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan Agreement (Exhibit “A” to the Petition);

(iii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within a period of two weeks from the date of receipt of the

communication from the Court Receiver, it would be open to the Petitioners to apply to the Court for further orders including sale of the Vehicle – EICHER TERRA 16 TIPPER by private treaty;

(iv) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the three tippers described in Exhibit “E” to the Petition.

6. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)