

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1375 OF 2014

Citi Corp Finance (India) Ltd.

... Petitioner

Versus

Hariom Enterprises & Anr.

... Respondents

Mr. Vivek Patil i/by M/s.Vivek Patil & Associates for Petitioner.
None for the Respondents.

CORAM: S.J.KATHAWALLA, J.
DATE: 27TH JANUARY 2015

P.C.

1. This Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Arbitration Petition is served on the Respondent No.1 and as regards service on the Respondent No. 2 (Guarantor), the packet containing a copy of the above Petition has been returned with the remark "Left". However, no relief is pressed against the Respondent No. 2 at this stage and liberty is sought to take out fresh Petition seeking relief against Respondent No. 2. The Petition is today taken up for final hearing. None appear for the Respondents.

2. By an Agreement dated 30th November 2010, the Petitioner had provided a loan of Rs. 10,00,000/- to the Respondent No. 1 for purchase of commercial vehicle being model No. ROCK BREAKER F25 and having Machine No. 106056 more particularly described in Exhibit – F to the Petition (“Said Commercial Vehicle”). By a deed of Hypothecation dated 30.11.2010 the said commercial vehicle was hypothecated with the petitioner by the Respondent No. 1.

3. The Loan amount of Rs. 10,00,000/- was repayable by the Respondent No.1 to the petitioner with interest @ 10.5% per annum in monthly installments commencing from 29.12.2010 and ending on 29.10.2014. Therefore, the aggregate amount payable under the loan agreement was Rs. 12,29,718/-.

4. Clause 5 of the agreement provides for the events of default; and Clause 16 provides for arbitration. There has been a default on the part of the Respondent No. 1. In view thereof both the respondents became liable to pay to the Petitioner a sum of Rs. 1,51,840.25/-. The Petitioner therefore invoked the arbitration clause in the Agreement dated 30.11.2010.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said commercial vehicle more particularly described in Exhibit – F to the Petition. In absence of any defense or contest, the averments contained in the Petition have remained uncontroverted. I see no reason why the statement/submissions made by the Petitioner in the Petition should not be accepted. Since Respondents have defaulted in repayment of the outstanding dues, it is necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the said commercial vehicle. The appointment of the Receiver is necessary in order to ensure that the said commercial vehicle is not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass an interim measure 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 said commercial vehicle namely model No. ROCK BREAKER F25 and having Machine No. 106056, more particularly described in Exhibit - F to the Petition, with direction to take forcible possession of the same 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 Respondent No. 1 in writing to act as the agent of the Receiver in respect of the said commercial vehicle described in Exhibit-F to the Petition. The Respondent No. 1 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 option. In the event of the Respondent No. 1 being desirous of acting as agent of the Receiver, the Respondent No. 1 shall be appointed as agent of the Receiver, subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Agreement for Commercial Vehicle Loan. (Exhibit A to the Petition);

(iii) In the event that the Respondent No. 1 fails to communicate his willingness to the Receiver to act as agent of the Court Receiver within a period of two weeks from the date of receipt of the communication from the Court Receiver, it would be open to the Petitioner to apply to the Court for further orders including sale of the said commercial vehicle described in Exhibit-F to the Petition by private treaty;

(iv) There shall be an interim injunction restraining the Respondent No. 1 from alienating, encumbering, parting with possession or creating any third party rights in respect of the said commercial vehicle namely model No. ROCK BREAKER F25 and having Machine No. 106056 more particularly described in Exhibit F to the Petition.

6. The Arbitration Petition is accordingly disposed of and liberty is granted to the Petitioner to take out a fresh Petition seeking relief against the Respondent No.2. A Copy of this order shall be served on the Respondent No.2 by hand delivery.

(S.J.KATHAWALLA, J.)