

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1197 OF 2014

H. D. F. C. BANK LIMITED

.....Petitioner

Versus

Sanjay Sitaram Khemka and Anr.

....Respondent

Mr. Sandesh Godse, i/by M/s.Vivek Patil & Associates., for Petitioner.

None for Respondent.

CORAM: S.J.KATHAWALLA, J.

DATE: 14th 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 Respondent. The Respondents are served with the petition through substituted service and an affidavit proving service by publication dated 23.12.2014 is on record. The Petition is today taken up for final hearing. None appear for the Respondent.

2. By an Agreement dated 03rd August, 2009 the Petitioner had provided a loan of Rs. 6,80,000/- to the Respondents for purchase of vehicle being Model No. FIAT LINEA EMOTION PACK and having Engine No. 0020125, chassis No. MCA11071709005896DPZ and Registration No. MH-02 BM-2250 more particularly

described in Exhibit – D to the Petition (“Said Vehicle”). By a deed of Hypothecation dated 03.08.2009 the said vehicle was hypothecated with the petitioner by the Respondents.

3. The Loan amount of Rs. 6,80,000/- was repayable by the Respondents to the petitioner with interest @ 10.28% per annum in monthly installments commencing from 07.08.2009 and ending on 07.07.2013. Therefore, the aggregate amount payable under the loan agreement was Rs. 8,25,168/-.

4. Clause 11 of the agreement provides for the events of default; and Clause 25 provides for arbitration. There has been a default on the part of the Respondents. In view thereof the Respondents became liable to pay to the Petitioner a sum of Rs. 2,33,652/-. The Petitioner therefore invoked the arbitration clause in the Agreement dated 03.08.2009.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said vehicle more particularly described in Exhibit – D to the Petition. 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 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

vehicle. The appointment of the Receiver is necessary in order to ensure that the said 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 vehicle namely Model No. FIAT LINEA EMOTION PACK and having Engine No. 0020125, chassis No. MCA11071709005896DPZ and Registration No. MH-02 BM-2250 more particularly described in Exhibit - D 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 Respondents in writing to act as agents of the Receiver in respect of the said vehicle described in Exhibit-D to the Petition. 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 option. In the event of the respondents being desirous of acting as agents of the Receiver, they shall be appointed as agents 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 Vehicle Loan. (Exhibit A to the Petition);

(iii) In the event that the Respondents fails to communicate their willingness to the Receiver to act as agents 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 vehicle more particularly described in Exhibit-D to the Petition by private treaty;

(iv) There shall be an interim injunction restraining the Respondents from alienating, encumbering, parting with possession or creating any third party rights in respect of the said vehicle namely Model No. FIAT LINEA EMOTION PACK and having Engine No. 0020125, chassis No. MCA11071709005896DPZ and Registration No. MH-02 BM-2250 more particularly described in Exhibit D to the Petition.

6. The Arbitration Petition is accordingly, disposed of.

(S.J.KATHAWALLA, J.)