

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1652 OF 2014

Kotak Mahindra Bank Ltd.,

....Petitioner

Versus

Krishna Shishpal Singh & Anr.

...Respondents

Ms. Vaishali D. Padale for Petitioner

None for Respondents

CORAM: S. J. KATHAWALLA,J.

DATED 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 Respondents and an affidavit proving service is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. Under the Loan –Cum Guarantee Agreement dated 29.12.2011, the Petitioner had provided a loan of Rs. 16,78,428/- to the first Respondent for purchase of Heavy Commercial Vehicle- TATA MOTORS LTD- TATA- 3518 described in Exhibit E to the petition (the said vehicle). Under the said Loan-cum- Guarantee Agreement dated 29.12.2011 the said vehicle was hypothecated with the Petitioner by the Respondent No.1.

3. The Loan amount of Rs. 16,78,428/- was repayable by the respondent to the petitioner with interest at the rate of 12.33% per annum in monthly installments commencing from 20.01.2012 and ending on 20.09.2015. Therefore, the aggregate amount payable by the Respondents to the petitioner under the Loan agreement was 20,98,350/-.

4. Clause 5.12 of the agreement provides for the events of default; and Clause 11.16 & 11.17 provides for arbitration. There has been a default on the part of the Respondents. The Respondents became liable to pay to the Petitioner a sum of Rs. 9,04,883.70/-. The Petitioner therefore invoked the arbitration clause in the agreement dated 29.12.2011.

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 –E to the Petition. In absence of any defense or contest by the Respondents, the averments contained in Petition have remained uncontroverted. I see no reason why the statement / submission 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 the said heavy

commercial vehicle namely TATA MOTORS LTD- TATA-3518 bearing Chasis No. MAT503010B3P35804 and Engine No. B591803111L63208552 and Registration No. MH46H3011, more particularly described in Exhibit “E” to the Petition, with direction to take forcible possession of the same with police assistance, if required , and without 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- E 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 respondent/s being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to 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 –cum Guarantee Agreement for vehicle Loan (Exhibit –‘A’ to the Petition).

(iii) In the event that the Respondent 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 Petitioner to apply to the Court for further orders including sale of the said vehicle described in Exhibit- E 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 heavy commercial vehicle namely TATA MOTORS LTD.- TATA 3518 bearing Chasis No. MAT503010B3P35804 and Engine No. B591803111L63208552 and Registration No. MH46H3011 described in Exhibit “E” to the Petition.

6. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA,J)