

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

Arb.A.No. 2 of 2007 ()

AGAINST THE ORDER/JUDGMENT IN OP 226/2005 of II ADDL.DISTRICT
COURT,ERNAKULAM DATED 21.12.2006

APPELLANT/PETITIONER IN ARB.OP 226/05 & RESPONDENT IN IA NO.3815/06:

M/S. ASHOK LEYLAND FINANCE LTD.
(A DIVISION OF INDUS IND BANK), NOW LOCATED AT
2ND FLOOR, SHALLOM TOWERS, EDAPPALLY
KOCHI-24, REP. BY ITS LEGAL EXECUTIVE
SHRI B.M.LAKSHMANAN, S/O.B.N.MUTHUSWAMMY, AGED 56

BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.THANKOM.G

RESPONDENTS/RESPONDENTS IN ARB.OP 226/05 & RESPONDENT IN IA NO.3815/06:

1. MAYADEVI, W/O. BABU S.,
PUTHUVAL PUTHENVEEDU, DIARY FARM ROAD
KUDAPPANAKUNNU P.O., PEROORKADA, TRIVANDRUM.
2. BABU S.,
CHITHRA BUILDING, T.C.36/1917, INCHACKAL
VELLAKADAVU P.O., TRIVANDRUM.

THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD ON 03-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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Arb.A.No.2 of 2007

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Dated this the 3rd day of July, 2015

JUDGMENT

P.N.Ravindran, J.

This appeal arises from the order passed by the Court of District Judge of Ernakulam on 21.12.2006 on I.A.No.3815 of 2006 in Arb. (OP).No.226 of 2005, an application filed by the appellant herein under section 9 of the Arbitration and Conciliation Act, 1996 for a prohibitory injunction restraining the respondents herein from obstructing the appellant from taking possession of a tipper lorry purchased by the respondents under a hire purchase agreement and to appoint an advocate commissioner to supervise the act of taking possession of the motor vehicle after preparing an inventory. The District Court had initially appointed an Advocate Commissioner to take possession of the motor vehicle. The Advocate Commissioner could not take possession in view to the obstruction caused by the first respondent. The court below thereupon passed another order directing the Advocate Commissioner to take possession of the vehicle and to produce it before the court below. Though the respondents filed Arb.A.No.34 of 2006 in this court challenging that order, it was dismissed by judgment delivered on 06.10.2006. This court also directed the respondents to

produce the motor vehicle before the court below. The respondents thereupon produced the motor vehicle before the court below and it was released to the appellant herein on execution of a kychit with the specific direction that the vehicle shall not be altered or transferred. The respondents thereupon filed I.A.No.3815 of 2006 praying that the motor cycle may be released to them on execution of kychit. The said application was heard and allowed by the order passed on 21.12.2006. By that order, the court below directed the appellant to release to the respondents, the aforesaid motor vehicle subject to the condition that the respondents shall furnish security to the satisfaction of the District Court, Ernakulam for the sum of ₹1,00,000/-. The said order is under challenge in this appeal filed by the financier.

2. When the appeal came up for hearing before us yesterday, we directed the Registry to ascertain whether Arb.(OP).No.226 of 2005 has been heard and disposed of. The Registry has reported that Arb. (OP).No.226 of 2005 was heard and dismissed by order passed on 08.02.2007. A copy of the said order has been made available to us and it reads as follows:

"Matter is settled. Vide endorsement made. Amount offered is paid by the petitioner. Vehicle is being produced. It shall be released to the respondent No.1 after verification from the office. The bond executed by the petitioner shall stand cancelled. Original petition is dismissed."

In view of the fact that Arb.(OP).No.226 of 2005 itself stands dismissed and possession of the vehicle has been handed over to the respondents, we are of the opinion that nothing survives for consideration in the instant appeal. The appeal is accordingly dismissed as infructuous. No costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-