IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Arb.A.No. 59 of 2015 ()
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I.A.No.510/2015 IN OP(ARBITRATION) No.134/2015 DT.17.8.2015
OF ADDL.DISTRICT COURT-VI, KOLLAM

APPELLANT/PETITIONER:
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NAKUL
S/O.NANDAKUMAR, USHAS, CHANDANATHOPE P.O.
MAMOODU, KOLLAM DISTRICT.

BY ADV. SMT.G.VIDYA

RESPONDENT(S)/RESPONDENTS:
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1. SRI RAM EQUIPMENTS AND FINANCE CO. LTD.
   3RD FLOOR, MOOKAMBIKA COMPLEX NO.4, LADY DESIKA ROAD
   MYLAPORE, CHENNAI, PIN-600004.

2. SRI.RAM COMMERCIAL VEHICLE FINANCE
   ANCHAL P.O., ANCHAL, KOLLAM DISTRICT-691306.

BY ADV. SRI.K.V.VINOD
ADV. SRI.SUNIL N.SHENOI

THIS ARBITRATION APPEAL HAVING COME UP FOR ADMISSION ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.**

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**Arb.A.No.59 OF 2015**

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**DATED THIS THE 4th DAY OF NOVEMBER, 2015**

**JUDGMENT**

**ANIL K.NARENDRAN , J.**

The appellant is the petitioner in I.A.No.510 of 2015 in O.P.(Arb.)No.134 of 2015 on the file of the Additional District Court-VI, Kollam. He filed the said application under Section 9(ii) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking a temporary injunction restraining the respondents herein and their men from seizing or repossessing tipper lorry bearing registration No.KL-02/AN-8727 or causing any obstructions to its movement till final disposal of O.P.(Arb.)No.134 of 2015. By order dated 17.8.2015, the Court below dismissed I.A.No.510 of 2015 holding that the appellant has not made out a prima facie case and that, if an order of injunction as prayed for is granted it will cause much inconvenience to the respondents. Aggrieved by the said order dated 17.8.2015, the appellant is before this Court in this appeal filed under Section 37(1)(b) of the Act .

2. We heard the arguments of the learned counsel for the

appellant and also the learned counsel appearing for the respondents.

3. The pleadings and documents on record would indicate that, in the year 2013 the appellant availed a loan facility with the respondents for an amount of ₹26,00,000/-, for the purpose of purchasing a tipper lorry. As per the loan agreement, the appellant has to repay the loan amount together with interest in 47 monthly instalments, the first instalment being ₹92,043/- and the rest of the instalments at the rate of ₹76,314/- per month, till 5.4.2017. Since the appellant defaulted payment of instalments, the 1st respondent issued notice dated 4.2.2014, terminating the loan agreement. Invoking the arbitration clause in the loan agreement, the 1st respondent moved the District and Sessions Judge (North), Rohini Courts, Delhi, under Section 9 of the Act, and obtained an interim order dated 5.11.2014 in ARB No.994 of 2014, appointing a Receiver to repossess the vehicle in question. By the said order, the Receiver was directed to offer an opportunity to the appellant for payment of the defaulted instalments, before seizure of the vehicle.

4. Alleging that, on 10.3.2015, the 2nd respondent attempted to repossess the vehicle, the appellant moved O.P. (Arb.)No.134 of 2015 before the Additional District Court-VI, Kollam, under Section 9 of the Act, seeking a permanent prohibitory injunction restraining the respondents and their men from seizing or repossessing the vehicle or causing any obstructions to its movement, pending arbitral proceedings. He has also moved I.A.No.510 of 2015 in O.P.(Arb.)No.134 of 2015, under Section 9(ii) of the Act, seeking a temporary injunction till final disposal of O.P. Before the Court below, the appellant contended, inter alia, that the arbitral proceedings already initiated at Delhi at the instance of the 1st respondent are without jurisdiction.

5. On receipt of notice, the respondents entered appearance in O.P.(Arb.)No.134 of 2015 and filed their objections to I.A.No.510 of 2015. They contended, inter alia, that the application filed before the Court below is not maintainable, in view of Section 42 of the Act, since the District and Sessions Judge (North), Rohini Courts, Delhi, which has entertained ARB

No.994 of 2014 and passed an interim order dated 5.11.2014, under Section 9(ii) of the Act, the said court alone has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the loan agreement and the arbitral proceedings. As such the application filed before the Court below is not legally maintainable.

6. By impugned order dated 17.8.2015, the Court below dismissed I.A.No.510 of 2015 holding that, the appellant has not made out a prima facie case by making repayment of a considerable amount. Further, if an order of injunction as prayed for is granted till the disposal of O.P., it will cause much inconvenience to the respondents. In the result, I.A.No.510 of 2015 was dismissed. However, the question of maintainability of the application, in view of the provisions under Section 42 of the Act, was left open since the respondents have not produced the loan agreement.

7. On 28.10.2015, when this Arb. Appeal came up for admission, the learned counsel for the appellant submitted that, though the appellant was ready and willing to clear the amount in

default, the Court below dismissed the interlocutory application even without considering the said plea. The learned counsel submitted further that, the appellant is ready and willing to clear the amount in default in instalments. In view of the submission so made, this Court issued notice on admission to the respondents through special messenger and posted the matter to 2.11.2015.

8. On 3.11.2015, when the Arb. Appeal came up for consideration, the learned counsel for the respondents sought time to get instructions as to the total amount in default and the appeal was posted today for that purpose.

9. Today when the appeal was taken up for further consideration, the learned counsel for the respondents made available a statement of account as on 2.11.2015 of the loan transaction in question, after serving a copy of the same to the learned counsel for the appellant. As per the said statement of account, the total amount outstanding as on 2.11.2015 is ₹32,48,630/-, out of which the amount in default comes to ₹20,25,829/-. The learned counsel for the respondents on

instructions would submit that, if the appellant withdraws all his contentions regrading maintainability of the arbitral proceedings already initiated at Delhi, the 1st respondent is prepared to permit him to clear the amount in default in 5 (five) equal monthly instalments, on a further condition that he shall continue to pay the regular monthly instalments in time. The learned counsel would also submit that, if the appellant undertakes to clear the amount in default as stated above and continues to pay the regular monthly instalments in time, the 1st respondent is prepared to waive 50% of the overdue charges of ₹6,17,304/- and also 50% of the pre-closure penalty of ₹61,140/-.

10. The learned counsel for the appellant would submit that, the appellant is ready and willing to clear the amount in default as on 2.11.2015, subject to all the conditions referred to above and that, the appellant shall also continue to pay the regular monthly instalments in time.

11. In such circumstances, this Arb. Appeal is disposed of with the following directions;

(a) The appellant shall clear the amount in default as on 2.11.2015 in the loan agreement in question, less 50% of the overdue charges and pre-closure penalty (as stated in Para.9 of this judgment) in **5 (five)** equal monthly instalments commencing from **20.11.2015**;

(b) Along with the first instalment payable on 20.11.2015, the appellant shall also pay the regular monthly instalment for November, 2015;

(c) The appellant shall continue to pay the regular monthly instalments for the period from December, 2015 to April, 2017, on the respective due dates, and the last installment shall be paid on 5.4.2017;

(d) If the appellant is remitting the instalments towards the amount in default as on 2.11.2015 and continues to pay the regular monthly instalments as directed above, all coercive steps against the vehicle in question shall be kept in abeyance.

(e) However, if the appellant commits default in remitting in any one of the 5 (five) instalments towards the amount in default as on 2.11.2015 or commits two consecutive defaults in remitting the regular monthly instalments, it would be open to the respondents to proceed against the vehicle in question, and to proceed with the arbitral proceedings already initiated against the appellant, in which event the appellant shall not be entitled for the benefit of waiver of 50% of the overdue charges and pre-closure penalty granted in this judgment.

Sd/-
**P.R.RAMACHANDRA MENON**,
**JUDGE**

Sd/-
**ANIL K.NARENDRAN,**
**JUDGE**

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