

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP(C).No. 2346 of 2015 ()

**(I.A.NO.870/2015 IN ARB.APPEAL NO.03/2015 OF 1ST ADDL.DISTRICT COURT,
ERNAKULAM)**

PETITIONER/RESPONDENT/CLAIMANT:

**M/S.KOTAK MAHINDRA PRIME LTD.,
BRANCH OFFICE, 4TH FLOOR, THADIKKARAN CENTRE,
PALARIVATTOM, KOCHI -682 025,
REPRESENTED BY ITS AUTHORIZED SIGNATORY AND DY. MANAGER
MR. JOMET K.J.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.PRATHAP PILLAI
SRI.BENOJ C AUGUSTIN
SRI.SEBIN THOMAS
SRI.VIVEK V. KANNANKERI
SRI.VISHNU BHUVANENDRAN**

RESPONDENT/APPELLANT/1ST RESPONDENT:

**AKBAR T.H.,
THOPPILAKATHU HOUSE,
KARAGAD VADAKKENCHERY, KANNAMBRA,
PALAKKAD- 678 686**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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OP(C).No. 2346 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE INTERM ORDER DATED 17.10.2014
- P2: TRUE COPY OF THE ARB APPEAL NO.3/2015 BEFORE THE LEARNED
DISTRICT COURT, ERNAKULAM
- P3: TRUE COPY OF THE APPLICATION IN IA.871/2015 FILED BY THE RESPONDENT
HEREIN
- P4: TRUE COPY OF THE ORDER DATED 24.02.2015 PASSED BY THE LEARNED
DISTRICT COURT IN IA.NO.871/2015
- P5: TRUE COPY OF THE ORDER DATED 18.08.2015 IN IA.NO.870/2015 PASSED BY
THE DISTRICT COURT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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K.ABRAHAM MATHEW J.

O.P.(C) No.2346 of 2015

Dated this the 2nd day of December, 2015

JUDGMENT

The petitioner advanced a loan of Rs.3,52,000/- to the respondent to purchase a vehicle. The latter agreed to pay the amount with interest in instalments. The vehicle was hypothecated to the petitioner. The respondent made default in paying the instalments. The petitioner filed an application before the arbitrator under Section 17 of the Arbitration and Conciliation Act. The arbitrator passed an order to seize the vehicle and appointed a commissioner to implement the order. The vehicle was accordingly seized. The respondent filed an appeal before the district court under Section 37(2)(b) of the Arbitration and Conciliation Act. By Ext P5 order the learned District Judge has held that the order passed by the arbitrator is illegal and directed the petitioner to return the vehicle to the respondent. This is challenged.

2. Heard.

3. A reading of Section 17 of the Act leaves no room for any doubt that the arbitrator has no power to appoint a commissioner to seize the vehicle. The order passed by him is certainly illegal. I do not find anything wrong in the order passed by the learned District Judge. At the same time, the respondent cannot be allowed to alienate the property or to cause it to be destroyed. So it is

necessary to issue some directions in this regard.

In the result, this Original petition is disposed of as follows:

The petitioner shall return the vehicle to the respondent. The petitioner shall produce it before the District Judge which shall issue a notice to the respondent to take back custody of the vehicle within two weeks from the date of receipt of the notice. The custody shall be given to him only if he files an undertaking in the form of an affidavit that he will not alienate the vehicle and will maintain it in good condition and will produce it before the executing court if an award happens to be passed against him and the petitioner files an execution petition to realise the amount covered by the award by the sale of the vehicle. If the respondent fails to take back the vehicle within the period allowed by the district judge, the petitioner is entitled to get back custody of the vehicle. The arbitrator will be given back the records from the district court.

Sd/-

K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge