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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CM (M) No.630/2012 and CM No.9582/2012 (Stay)**

% Decided on: 9th February, 2015

HDFC BANK LTD & ORS ..... Petitioners
Through: Mr. Sanjeev Singh, Advocate.

versus

SUDESH KUMAR ..... Respondent
Through: Mr. C.J. Gupta, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 26th April, 2012 the Petitioners have preferred the present petition whereby the learned Trial Court set aside the sale of the vehicle and directed HDFC Bank to pay a cost of Rs. 5,000/- each per day to the Respondent in case of default of order of the Court and permitted the Respondent to recover the cost in accordance with Order 21 CPC.

2. A brief exposition of the facts is that a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') was filed being Petition No.32/2008 titled as HDFC Bank Ltd. vs. Shri Sudesh Kumar etc. wherein the learned Additional District Judge was pleased to appoint Shri Naresh Yadav, Authorized Representative of the HDFC Bank Ltd. as Receiver to take into custody vehicle Tata 4018 bearing registration No.PB-30D-2489, Engine No.50M62444977, Chasis No.447205MUZ216040 and its body from the possession of the Respondent and keep the same under his

charge in safe custody with the same condition of vehicle as taken in possession from the Respondent against receipt and details of the condition of vehicle under intimation to the Court. Notice was issued to the Respondent returnable for 26th March, 2008. On 1st December, 2008 since no process fee was filed, the petition under Section 9 of the Act was dismissed for non-prosecution. In the meantime, on 3rd November, 2008 the vehicle was repossessed and on 4th November, 2008 the goods lying in the vehicle were returned to the owner of the goods. In the arbitration proceedings the award was passed by the learned Arbitrator on 17th January, 2009 which is as under:

> *"IN THE RESULT. Taking the totality of circumstances into consideration and for the reasons aforesaid, an Arbitral Award is made in favour of the Claimant-Bank HDFC Bank Limited, registered office at HDFC Bank House, Senapati Bapat Marg, Lower Parel (West), Mumbai-400013 and Branch/Lending office at HDFC Bank Limited, Retail Assets Division, 9th Floor, Ansals Classique Tower, J-Block, Rajouri Garden, New Delhi-110027 and against the Respondents (1) Shri Sudesh Kumar S/o NOhar Singh, C/o Ganpati Jewellers, 19/06, Canal Road, New Railway Road, Narwana, Distt. – Jind, Haryana, (2) Shri Vishal Gupta S/o Sudesh Kumar Gupta, C/o Ganpati Jewellers, 19/06, Canal Road, Near Railway Road, Narwana, Distt. –Jind, Haryana and (3) Shri Ashok Bansal S/o Shri Chand Bansal, 581, Auto Market, Distt. Hissar, Haryana, in terms that:*
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> *(i) The Respondents do pay, jointly and severally, to the Claimant-Bank a sum of Rs.8,47,381/- (Rupees Eight Lacs Forty Seven Thousand Three Hundred Eighty One only) together with interest calculated on this outstanding due amount Rs.8,47,381/- @ 12% per annum from the date of award till the payment by the Respondents on realization there of by the Claimant.*

(ii) The Claimant-Bank shall take the possession of the commercial vehicle in question Truck TATA 4018, bearing registration No.PB 30 D 2489 and Engine No. 50M62444977 & Chasis No. 447205MUZ216040 along with body from the receiver and in that event the Claimant-Bank shall sell the commercial vehicle Truck TATA 4018 and first appropriate the sale proceeds towards any reasonable expenses incurred by it for seizing an selling the commercial vehicle and the balance amount should then be appropriated against the outstanding dues.

(iii) If there is any shortfall between the sale proceeds and the amount found due by this tribunal, the Claimant-Bank shall recover the balance of the outstanding dues from the respondents by enforcing this award u/s 36 of the 1996 Act. In case of any surplus amount, the same shall be refunded to the respondents.

(iv) The respondents, in the first instance, do pay to the Claimant-Bank the costs of arbitral proceedings including the fee of arbitrator quantified at Rs.6,000/- and on realization of the fee from the respondents, the Claimant shall make payment of half of the same to this arbitral tribunal on its address given above. The unpaid cost of arbitration shall be a lien on this arbitral award.

This Arbitral Award is made, sealed and signed at Delhi on a stamp of Rs.850/- on this 17th day of January, 2008. A signed copy of this Arbitral Award may be sent to the parties to the agreement in terms of Section 31 (5) of the Arbitration & Conciliation Act, 1996."

3. No objections to the award were filed by the respondent and thus the vehicle was sold on 26th February, 2009 and the proceeds of the sale were accounted to the loan account of the Respondent. On 22nd March, 2011 after

more than two years the Respondent filed an application under Order 40 Rule 3 CPC before the learned Additional Sessions Judge wherein notice was issued to the Petitioners as well as Shri Naresh Yadav, Authorized Representative of the Plaintiff Company, the receiver of the Tata 4018 bearing registration No.PB-30D-2489, Engine No.50M62444977, Chasis No.447205MUZ216040 wherein finally the impugned order was passed. The contention of the Respondent in the application before the learned Additional District Judge was that Naresh Yadav, Authorised Representative of the Petitioner was to keep the vehicle in his custody but he breached the order passed by the Court and sold the Vehicle. The learned Additional District Judge having passed no order of sale of the vehicle of the respondent thus Naresh Yadav committed contempt of Court as neither the vehicle was restored to the Respondent nor brought to the Court by the Petitioner or the receiver.

4. The learned Additional District Judge on hearing the parties came to the conclusion that the receiver without authority of law sold the vehicle in connivance with the Petitioner and thus both of them are liable to make good the loss to the Respondent and sale of the vehicle was set aside. Section 9 of the Act provides for interim measures for preservation, interim custody or sale of goods which are the subject matter of arbitration agreement to secure the amount in dispute in the arbitration. The learned Trial Court was of the view that since the interim order dated 14th January, 2008 was not confirmed the receiver ought to have sought permission of the Court before selling the property.

5. A perusal of the award would show that in the arbitration proceedings despite issuance of notice Respondent did not enter appearance before the

learned Arbitrator, hence he was proceeded ex-parte. After the evidence was led by the Petitioners the award as noted above was passed which permitted the Petitioners to take possession of the commercial vehicle Tata 4018 bearing registration No.PB-30D-2489, Engine No.50M62444977, Chasis No.447205MUZ216040 from the receiver and sell the same. The vehicle was repossessed on 3rd November, 2008 when the interim order passed by the learned Additional District Judge was subsisting, petition under Section 9 of the Act was dismissed on 1st December, 2008 and on 17th January, 2009 the award was passed.

6. Thus after the petition under Section 9 of the Act was dismissed, the respondent made no effort to repossess the vehicle from the receiver as on dismissal of the petition the interim order stood vacated immediately. However, this event was immediately super imposed by the award dated 17th January, 2009 pursuant whereof the vehicle was sold on 26th February, 2009 awaiting the time when Respondent filed no objections against the award.

7. Consequently, the order impugned is set aside as no illegality can be attached in the sale of vehicle pursuant to the passing of the award and the Respondent by filing an application under Order 40 Rule 3 CPC could not have adopted the remedy, without objecting to the award passed.

8. Petition and application are accordingly disposed of.

(MUKTA GUPTA)
JUDGE

FEBRUARY 09, 2015
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