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

\+   **O.M.P(I) No. 540/2015 & I.A. No.25026/2015**

%   **Date of Decision: 23rd December, 2015**

KOTAK MAHINDRA PRIME LTD ..... Appellant
Through: Mr. Vikas Chopra, Adv.

versus

KAMAL CHAUHAN & ANR. ..... Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. There is no appearance on behalf of the Respondent despite service. The respondent is proceeded *ex parte.*

2. The petitioner is seeking appointment of receiver under Section 9 of the Arbitration and Conciliation Act, 1996 to take possession of vehicle make 'Range Rover Sport' bearing registration No.DL 8CY 9000, Chassis no. SALLSAAF38A276753 and Engine no. 0506298308DT.

3. Vide loan agreement number CF10697499 dated 28th August, 2014, the petitioner advanced a loan of Rs.35,00,000/- to the Respondent repayable in 48 monthly instalments of Rs.96,285/- each.

4. The respondent committed default after the payment of 8 EMI's whereupon vide notice dated 03rd September, 2015, the petitioner recalled the loan and called upon the respondent to pay the total outstanding amount. The respondent has not complied with the aforesaid notice. The amount payable by the respondent as on 9th September, 2015 is Rs.34,40,962/-.

5. This Court is satisfied that the petitioner has made out a case for

appointment of the receiver. The petition is, accordingly, allowed and Amit Bhargava, the representative of the petitioner is appointed as receiver to take the possession of the vehicle bearing registration no. DL 8CY 9000, Chassis no. SALLSAAF38A276753 and Engine no. 0506298308DT.

6. The receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.

7. The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

8. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

9. The receiver shall also ensure that the repossession of the vehicle does not result in any breach of peace. In the event of any breach of peace, the receiver shall not proceed without assistance of police.

10. At the time of taking the custody of the vehicle, the receiver shall deliver a copy of this order to the person from whom the possession it is taken.

11. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession.

12. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

13. After taking the vehicle in possession, the receiver shall keep the vehicle in safe custody.

14. If the respondent makes payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on s*uperdari* subject to an undertaking by the respondents to the receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

15. If the respondent is not in a position to clear the entire outstanding instalments, the receiver shall give him another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment the outstanding instalments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

16. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver, with the prior permission of the arbitrator, would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the arbitrator along with his final report.

17. The receiver shall submit his report before this Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above.

18. The petitioner submits that the arbitration proceedings have already been initiated. The receiver shall submit a copy of his report before the arbitrator.

19. The learned arbitrator shall decide the disputes referred for arbitration uninfluenced by the present order.

20. The parties are at liberty to apply to the learned arbitrator for modification of this order.

21. This order shall remain in force till either the respondent makes the payment of the loan amount or till it is modified by the learned arbitrator during arbitration proceedings or till the termination of the arbitration proceedings.

22. The petition is disposed of in the above terms. Order to be given *Dasti* under signatures of the Court Master.

23. This Court has noticed that the orders for appointment of receiver passed by the Trial Courts in such matters are not comprehensive. Copy of this judgment be, therefore, sent to all District Judges for being circulated to the Trial Courts.

J.R. MIDHA, J.

DECEMBER 23, 2015
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