Application No.3355 of 2016

RAJIV SHAKDHER,J.

1. The prayer made in the Application is as follows:-

> *".... to pass an order prohibiting the Garnishee, respondents 3 and 4 from making payment upto a limit of Rs.4,41,871/- (four lakhs fourty one thousand eight hundred and seventy one only) every month to the extent as contemplated in Section 60 of C.P.C. viz., after deducting the first Rs.1,000/- of the salary of respondent No.1 and withholding 1/2nd of the remainder salary and restrain respondent No.1 from receiving the salary amount so withheld from the Garnishee/respondents 3 and 4 and further direct the Garnishee/respondents 3 and 4 to deposit the amount of salary so withheld every month to the credit of the above application pending initiation and disposal of arbitration proceedings between the applicant and respondent No.1 and till enforcement of the award that has been passed in the arbitration proceedings .... ? "*

2. Notice in this Application was issued both to respondents No.1 and 2 as well as the Garnishees, i.e. respondents No.3 and 4. The record shows that service vis-a-vis respondents stands completed. Despite service, there is no representation on their behalf.

3. I may only note that respondents No.3 and 4 is the same entity, i.e., Bharat Coking Coal Limited. On being enquired, learned counsel for the applicant says that two addresses have been given, as the applicant is not sure as to the office, at which, respondent No.1 is employed by Bharat Coking Coal Limited.

4. Since there is no representation on behalf of the respondents, there is no traverse to the averments made in the application.

5. On merits, the averment made in the affidavit by the applicant is as follows : It is stated that respondent No.1, who is the principal borrower, along with respondent No.2, who is the co-borrower, approached the applicant to extend a loan facility qua purchase of a vehicle. Consequently, vide agreement No.BDB00159D, dated 16.08.2011, loan was advanced to purchase a vehicle described as : TATA LPT3118 TC 52 BS3 COWL. The loan amount disbursed in favour of respondent No.1 was a sum of Rs.16,50,000/-. The said amount was payable in 48 Equated Monthly Installments (EMIs). The first installment was payable on 21.09.2011, while the last installment was payable on 21.07.2015. The applicant submits that under the aforementioned Loan Agreement, respondent No.1 has undertaken to repay the total loan amount, along with finance

charges, equivalent to Rs.22,94,700/-.

4. It is averred that the subject property is hypothecated to the applicant. According to the applicant, respondent No.1 is bound to deliver the vehicle to the applicant, in the event of default of payment of installments. According to the applicant, as on 01.07.2016, the respondents No.1 and 2 are required to pay a sum of Rs.4,41,871/-.

5. The loan agreement entered into between the applicant and respondents No.1 and 2 contains the arbitration agreement which is reflected in Clause 23 of the agreement, dated 16.08.2011.

6. Learned counsel for the applicant averred that the arbitration proceedings have been triggered.

6.1. The learned counsel for the applicant further avers that respondent No.1 is employed and working with respondents No.3 and 4, that is, the garnishees. Accordingly, the applicant has moved this Court seeking the relief, which is adverted to hereinabove.

RAJIV SHAKDHER, J.

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7. Given the aforesaid circumstances, I am inclined to allow the prayer made. Accordingly, the Application is disposed of in terms of the prayer extracted hereinabove.

8. Since the arbitration proceedings have been initiated and the same is pending, parties are given liberty to take necessary steps hereafter, albeit, in accordance with law, as may be deemed fit.

10.11.2016

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