

In the High Court of Judicature at Madras

Dated: 01.12.2016

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

A.Nos.6357 and 4050 of 2016

Mr.Subramanian S.

.... Applicant in A.No.6357 of 2016
& Respondent in A.No.4050 of 2016

Vs.

M/s.TVS Credit Servivces Limited
rep. by its Authorised Signatory
Mr.K.Dinakaran,
"Jayalakshmi Estate"
No.29, Haddows Road,
Chennai - 600 006.

.... Respondent in A.No.6357 of 2016
& Applicant in A.No.4050 of 2016

Prayer in A.No.6357 of 2016:

Application filed under Order XIV Rule 8 of the O.S.Rules read with Section 9(ii)(e) of the Arbitration and Conciliation Act, 1996 to direct the respondent to handover the vehicle Ford Fiesta D SXI car, bearing Chassis No.MBJBXXMRJB9K43153, Engine No.9K43153 and Registration No.TN37BE0088 seized in pursuance to the order of this Hon'ble Court passed in Application No.4050 of 2016 dated 18.08.2016

For Applicant in A.No.6357 of 2016 : Mr.M.Sunil Kumar
For Respondent in A.No.6357 of 2016: Mr.P.H.Manoj Pandian
Ms.V.Vanitha
Advocate Commissioner

COMMON ORDER

1. To be noted, Application No.4050 of 2016 was filed by TVS Credit Services Limited (in short TVS), i.e., the lender. In so far as Application No.6357 of 2016 is concerned, the same has been filed by Mr.Subramanian, i.e., the borrower.

2. This Court vide order dated 18.08.2016 appointed an Advocate Commissioner based on the prayer made by TVS in A.No.4050 of 2016.

3. Mr.Subramanian/borrower has, therefore, filed an application for issuance of a direction to TVS to handover the subject vehicle, which is described as: Ford Fiesta D SXI car, bearing Chassis No.MBJBXXMRJB9K43153, Engine No.9K43153 and Registration No.TN37BE0088 .

4. Mr.M.Sunil Kumar, who appears for Mr.Subramanian, says that there is a complete inconsistency in the amounts claimed by TVS. In this behalf, my attention is drawn to the letter dated 05.07.2016 issued by TVS to Mr.Subramanian, wherein the foreclosure amount is indicated as

Rs.1,81,898/-.

4.1. Learned counsel also draws my attention to the affidavit appended to A.No.4050 of 2016, wherein TVS, apparently, claimed a sum of Rs.1,63,815/-, as being the amount due and payable as on 27.07.2015.

4.2. Furthermore, learned counsel also draws my attention to the statement of accounts furnished by TVS, which is appended to the typed set of documents filed in A.No.6357 of 2016. Learned counsel says that as per the said statement, the total amount due to TVS as indicated therein is a sum of Rs.1,25,682.15.

5. I have put these figures to the counsel for TVS. Counsel for TVS is unable to explain the discrepancy in the amounts. It is the submission of the learned counsel for TVS that on 30.06.2016, a sum of Rs.23,000/- was received from Mr.Subramaniam, which was adjusted after the letter dated 05.07.2016 was issued and, therefore, the amount was reduced to Rs.1,63,815/- as on 27.7.2016.

6. According to me, this explanation does not seem to be correct, as if the sum of Rs.23,000/- is adjusted against the sum of Rs.1,81,898/- shown as due in the letter dated 05.07.2016, the balance amount would be a sum of Rs.1,58,898/- and not Rs.1,63,815/-.

7. Be that as it may, it cannot be disputed by TVS that, even if, all claimed amounts are taken into account, which would include: the overdue amount, the cheque bouncing charges, the overdue interest and the seizure charges - the total amount payable by Mr.Subramaniam, would be Rs.1,25,682.15.

8. I may indicate that according to Mr.Subramaniam, he owes only a sum of Rs.24,716/-. However, having regard to the fact that there would be delay and concomittant costs, if, the parties were to go to litigation, Mr.M.Sunil Kumar, who appears for Mr.Subramaniam, says that the applications can be disposed of based on the following agreed directions.

i) Mr.Subramaniam, will pay a total sum of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) towards full and final settlement in the following manner:

a) Rs.25,000/- shall be paid within 10 days from the date of receipt of a copy of the order;

b) the balance amount will be paid in four (4) instalments of Rs.25,000/- each, of which, the first instalment will be paid on or before 01.01.2017. Likewise, the remaining three (3) instalments will be paid on

or before, 01.02.2017; 01.03.2017 and 01.04.2017.

c) Upon payment of the first Rs.25,000/- TVS will handover the subject vehicle along with the RC book to the applicant, Mr.Subramanian.

9. To be noted, that upon payment of the aforementioned amount, i.e., Rs.1,25,000/-, no further payment would be due and payable to TVS by Mr.Subramanian in respect of the claim, which is subject matter of the present action.

10. The above applications are closed in the aforementioned terms.

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01.12.2016

RAJIV SHAKDHER,J.

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01.12.2016

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