

**O.A. No.137 of 2016
and A. No. 1238 of 2015
O.A. No. 2740 of 2015**

K.RAVICHANDRABAABU, J.

Original Application No. 137 of 2016 is filed seeking for an interim injunction restraining the respondents, their agents, servants, employees and any one claiming under their or acting on their behalf from any manner selling or de-assembling the Agricultural tractor, Mahindra Bhumiputra 475 bearing registration No. TN 68 K 9011 with Engine No. RJBG00892 and chassis No. RJBG00892.

Application No. 1238 of 2015 is filed seeking for directing the 1st respondent to return the Agricultural tractor Mahindra Bhumiputta 475 bearing registration No. TN 68 K 9011 with Engine No. RJBG00892 and chassis No. RJBG00892 to the petitioner.

2. In both these applications the applicant is the borrower, the respondent No. 1 is the financier and the respondent No. 2 is the guarantor. The respondent No.1/financier filed application No. 2740 of 2015 seeking for appointment of Advocate Commissioner to seize and possess the vehicle on the contention that the present applicant after availing loan committed default. In that application, notice was ordered by this Court and thereafter on 05.01.2016, this Court

appointed Advocate Commissioner. Pursuant to the said order, the Advocate Commissioner seized the vehicle and handed over the same to the financier. Now, the present applications are filed by the borrower who is the respondent No. 1 in the application No. 2740 of 2015 by contending that though a sum of Rs. 80,000/- was paid by the applicant herein on 16.03.2015, i.e. just 10 days prior to the filing of the application seeking for appointment of Advocate Commissioner, the said fact was not disclosed before this Court by the financier while obtaining an order in the said application. Therefore, it is contended that the applicant having paid the said sum of Rs. 80,000/- just prior to ten days of filing this application will certainly show his bonafide in making payment of the arrears of instalments as on today, if some breathing time is given to him to make such payments.

3. Mr.K.K.Muralidharan, learned counsel appearing for the financier submitted that the appointment of Advocate Commissioner was not made as an ex-parte order and on the other hand, only after service of notice to the respondents, this Court passed such an order and therefore the applicant herein cannot be permitted to contend that such appointment of Commissioner and seizing of the vehicle is not at all warranted in view of the recent payment of Rs.80,000/- made on 16.03.2015. He further submitted that

arbitration proceedings have been initiated already and the same is going on and therefore the applicant can take part in the said proceedings.

4. Heard the learned counsel for the applicant and the learned counsel for the respondent financier and perused the materials placed on record.

5. It is seen that the application for appointment of Advocate Commissioner was filed before this Court on 09.04.2015 and the affidavit filed in support was sworn on 01.04.2015. Perusal of the statement made in para No. 7 of the said affidavit indicates that the contention of the financier was that the last payment was made on January, 2014. Therefore the payment of Rs. 80,000/- admittedly made on 16.03.2015 by the applicant herein just few days prior to the date of filing application, was not at all disclosed, even though such payment is admitted to have been made as reflected in the statement of accounts filed by the financier in the typed set of papers. No doubt the applicant herein failed to appear before this Court in the Advocate Commissioner application. However while hearing the same, the financier ought to have brought to the knowledge of this Court about such recent payment.

6. Mr.Vijaykumar, learned counsel appearing for the applicant submitted that the applicant is an illiterate and poor farmer depending upon the income derived through the tractor which is seized and therefore he may be given a chance to revive his earning capacity by returning the tractor on making the arrears of payment in some instalments.

7. Considering the fact that the applicant has paid a considerable sum of Rs.80,000/- on 16.03.2015 well before filing the application for appointment of Advocate Commissioner and considering the fact that the applicant has also come forward to make the arrears of payment as on today in instalments and considering the fact that the vehicle seized is a tractor which is put to use for agricultural purposes, this Court is of the view that interest of both the parties will be protected by passing the following order;

a) The applicant shall pay the arrears of instalments as on today after giving credit to the payment already made to the respondent financier in three instalments as follows;

i) 1/3rd of such total arrears shall be paid as 1st instalment on or before 11.04.2016.

ii) 1/3rd of total arrears shall be paid as 2nd instalment on or

before 29.04.2016 and

iii) 1/3rd of the total arrears shall be paid as 3rd and last instalment on or before 13.05.2016.

b) On making such payment of first instalment of the 1/3rd amount within the time stipulated by this Court as stated supra, the respondent financier shall return the vehicle to the applicant immediately.

c) On making such payments in three instalments as stated supra, both the applicant and the respondent financier are directed to reschedule the account accordingly.

d) If any one of the instalments is not paid by the applicant as stated supra within the time stipulated by this Court, the order passed in these applications will stand cancelled automatically and the respondent financier is entitled to repossess the subject matter vehicle without reference to the Court.

8. The learned Advocate Commissioner has filed a report stating that pursuant to the execution of the warrant issued by this Court, he has seized the vehicle and handed over the same to the applicant. Considering the report filed by the Advocate

Commissioner as well as the memo seeking for additional

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remuneration, this Court is of the view that he is entitled to an additional remuneration of Rs.10,000/-. Accordingly, the applicant in A. No.2740 of 2015 is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) as additional remuneration to the Advocate Commissioner within a period of seven days from today.

All the applications are disposed of in the above terms.

17.03.2016

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