

\* **HIGH COURT OF DELHI AT NEW DELHI**

+ **F.A.O. No.92/2016 & C.M. No.6576/2016**

**Decided on : 23<sup>rd</sup> February, 2016**

SHWETA SHARMA ..... Appellant

Through: Mr. Viplav Sharma, Advocate.

Versus

M/S. VOLKSWAGEN FINANCE PVT. LTD. .... Respondent

Through: Mr. Sanjeev Sagar & Ms. Jasvin Dhama,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE V.K. SHALI**

**V.K. SHALI, J. (ORAL)**

1. This is an appeal filed by the appellant under Section 37 of the Arbitration & Conciliation Act, 1996 against the orders dated 27.11.2015 and 19.12.2015 passed by the learned Additional District Judge.

2. I have heard the learned counsel for the appellant as well as learned counsel for the respondent. The learned counsel for the appellant has contended that the aforesaid order dated 27.11.2015 by virtue of which the order of repossession of the appellant's vehicle has been passed by the learned ADJ-01 (South), New Delhi on the ground that there has been default on the part of the appellant borrower in repayment of the loan

amount is not factually correct. The learned counsel has stated that the appellant had given instructions to her banker for ECS debit from her husband's account but for the purpose of the said debit, a requisition is to be received from the respondent bank and in the instant case, the amount of Rs.5,44,444/- which is stated to be outstanding by the appellant is factually incorrect and the appellant at best is prepared to pay two installments for which she is stated to be in default and the order be reviewed.

3. It has also been contended by the learned counsel that the application under Section 9 of the Arbitration and Conciliation Act stands disposed of and therefore, he has been left with no remedy under law except to assail the impugned orders under Section 37 of the Act. This factum has been contested by the learned counsel for the respondent. He has submitted that a perusal of the order dated 27.11.2015 would clearly show that the appellant was given three day's time to make payment of the entire outstanding loan amount and if so done, the vehicle was to be returned back if it had been repossessed by the respondent. It has been stated that despite the order of repossession having been passed in their favour, the appellant has been evading the execution of the order as a

consequence of which the vehicle could not be repossessed and, therefore, it is prayed before this court that the order passed under Section 9 of the Arbitration and Conciliation Act be set aside.

4. I have considered the rival contentions and have also gone through the impugned orders dated 27.11.2015 as well as 19.12.2015. Briefly stated the facts of the case are that the appellant is purported to have taken a loan of Rs.40 lacs from the respondent vide loan agreement No.20141052508 for purchase of a vehicle make AUDI A6. The aforesaid amount of loan was to be repaid by the appellant in 84 equal monthly installments of Rs.46,380/- each but it is alleged by the respondent that the appellant did not maintain the financial discipline and did not pay the installments timely as a consequence of which the entire loan amount was recalled and a notice for recall was given to her on 4.11.2015. After recall, it was stated that the appellant was under an obligation to pay the total amount of Rs.41,91,873.45 within three days of the receipt, failing which appropriate recovery proceedings against the appellant were threatened to be initiated. Since the appellant did not respond to the notice, the respondent filed an application under Section 9

of the Arbitration & Conciliation Act for an ad interim order before the court of ADJ.

5. The learned court passed a reasoned and a balanced order and appointed a Receiver subject to following conditions :-

- *An inventory in respect of the attachments in the vehicle shall be made by the Receiver and copy of the same be given to the person from whose possession the vehicle is possessed and the petitioner who shall file the same in court along with the report of the Receiver.*
- *The condition of vehicle shall be noted and the Receiver shall take photograph of the repossessed vehicle from all sides and shall ensure that vehicle is kept in the same condition as it was repossessed.*
- *An appropriate receipt shall be given to the person from whose custody the vehicle is taken. The vehicle in question shall not be sold or disposed of or parted with without due permission of the court.*
- *In case the respondent clears all the installments due, the vehicle will not be repossessed and if repossessed, the vehicle is to be released within three days of receipt of due installments.*
- *An affidavit indicating repossession of vehicle be filed within 3 days of its repossession along with its photographs and inventory.*

- *The Receiver will inform the respondent the option of resolving the dispute amicably by settlement in Mediation Cell, Saket Courts, New Delhi and will also give a copy of this order to the respondent at the time of repossessing the vehicle.*
- *The petitioner shall refer the dispute to arbitration in terms of clause X of Loan Agreement for appointment of an Arbitrator within four weeks from today and inform the court about the same on the next date.”*

6. The matter was fixed for 25.2.2016 and notices were directed to be issued to the appellant, who was the respondent in the said application for appointment of a Receiver. On 19.12.2015, the respondent herein filed an application before the learned ADJ for bringing it to the notice of the court that the local police was not giving necessary police assistance for repossession of the vehicle as a consequence of which the ad interim order dated 27.11.2015 could not be executed. The court was pleased to direct the local police to render necessary police assistance so that the order could be executed.

7. The appellant instead of going back to the learned court below has chosen to file the present appeal. This attitude on the part of the appellant is highly objectionable inasmuch as, in the first instance, the appellant ought to have approached the learned ADJ who has passed the order as it

has given the appellant sufficient window to make the payment of the outstanding amount and permit her to retain the vehicle. By avoiding that process, the appellant's appeal cannot be entertained by this court. In case, this is done, it will set a very wrong precedent and would also give a wrong signal to the court below that the appellant is trying to remote control the proceedings before the learned ADJ.

8. I, therefore, hold that the present appeal is not maintainable without the appellant first approaching the learned ADJ by filing an application seeking modification, alteration or vacation of the ad interim order. With these directions, the appeal stands disposed of.

**V.K. SHALI, J.**

**FEBRUARY 23, 2015**  
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