IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 17 OF 2017.

Samir Shaikh …… Appellant.
Versus
Indusind Bank Ltd. & Anr. ……. Respondent.

Mr. Jatin Ramaiya & Mr. Ivan Santimano, Advocates for the Appellant.

Coram : N.M. Jamdar, J.

Date : 17 November 2017.

P.C.:

This Appeal is filed challenging the order passed by the learned District Judge, South Goa, Margao dated 29 July 2015 under Section 9 of the Arbitration and Conciliation Act, 1996.

2. The Appellant had approached the Respondent Financial Institute for purchase of a vehicle. Financial assistance to the extent of ₹ 5,70,000/- was granted to the Appellant and a loan agreement was executed on 23 November 2010. The Appellant failed to pay the installments on time even though the Respondent called upon him to do so. Ultimately, in view of the agreement and the arbitration clause therein, the Respondent moved the learned District Judge by an application under Section 9 of the Arbitration Act. The learned District Judge allowed the application and directed a Receiver to take

custody of the vehicle in question.

4. The learned Counsel for the Appellant submitted that the parameters for exercise of discretion are not present in the case at hand and that merely because some amount has remained unpaid an order of this nature could not have been passed.

5. The learned District Judge has exercised the discretion to prevent wastage and further transfer of the vehicle. Ingredients for appointment of a Receiver in such cases were satisfied and the Court came to the conclusion that the amount was not repaid. It is not the case of the Appellant that entire amount was repaid. Even though the argument of the Appellant is that the vehicle could not have been transferred since it was hypothecated, it is only an argument in law. The genuine reality is that it does not stop the Appellant from transferring the vehicle. If the vehicle is transferred and possession is handed over and is moved out of the State, the Respondent Institute would be seriously prejudiced as the vehicle in question was the only hypothecation asset against the loan. In these circumstances, it cannot be said that the view taken by the learned District Judge is an impossible view or that such a view could not have been taken.

6. In the circumstances, there is no merit in the Appeal. The

appeal is, accordingly dismissed.

7. It is informed that the Appellant has filed the a Petition under Section 34 of the Arbitration Act which will be decided on its own merits.

N.M. Jamdar, J.