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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 54 OF 2017

Tata Capital Financial Services Ltd ...Petitioner
Versus
Amrjeet Singh Ghotra & Balbirsingh Singh Ghotra ...Respondents

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Mr Nikhil Mehta, *i/b KMC Legal Venture, for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 17th February 2017

PC:-

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996. This Petition has been served. An Affidavit of Service is tendered. It is taken on file.

2. The Petition is on the weekly board, notified a week ago. None appears for the Respondents.

3. By a Loan-cum-Hypothecation Guarantee Agreement No. 7000266146, the Petitioners provided a loan of Rs. 21,00,000/- to the Respondent for purchase of a vehicle bearing Chassis No. MB1KADYC2EPFL3660 and Registration No. CG04 HR9547. This vehicle is hypothecated to the Petitioner towards the security for repayment of the loan. The loan was repayable in 57 months with interest at 14.12% per annum with monthly instalments of Rs. 51,303/-.

4. The Loan Agreement contains an agreement for arbitration. The Respondent is in default and the claim is in the amount of Rs. 18,37,846/-. The Petitioner has recalled the loan by its notice dated 15th November 2016.

5. The Petitioner has not yet invoked arbitration but has in the meantime approached the Court for interim relief. There being no defence or contest, I see no reason why the reliefs sought should not be granted. It is clearly necessary to protect the Petitioners' interest. The appointment of the Receiver is required to ensure that the asset is not wasted or alienated, leaving the Petitioner with no recourse. An injunction is also justified to avoid irreparable harm and injury. The balance of convenience is with the Petitioner which has made out a substantial *prima facie* case.

6. Hence, the Petition is disposed of in the following terms:

> **(a)** Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the Hypothecated Asset, viz., vehicle bearing Chassis No. MB1KADYC2EPFL3660 and Registration No. CG04 HR9547, with direction to take forcible physical possession of the said Asset with police assistance, if required, and without any prior notice to the Respondent;

(b) Within two weeks of taking possession, the Court Receiver is to offer the Respondent an option in writing to act as the Receiver's agent for this asset.

(i) The Respondent is required to respond to the offer in two weeks of it being made.

(ii) Should the Respondent accept the offer, he is to be appointed as an agent on the usual terms and conditions including the provision of a security deposit and periodic royalty. The Court Receiver is to decide the amount of security and royalty on the basis of the terms and conditions of the Loan-cum-Hypothecation Agreement.

(iii) If the Respondent declines the offer or does not accept it within two weeks of receipt, the Petitioner may apply to Court for further orders, including for sale of the asset/vehicle by private treaty;

(c) There will also be an interim injunction restraining the Respondent from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the said Asset described in the Petition.

(d) The Petitioner's advocates will communicate this order to the Court Receiver within two working days of an authenticated copy being made available.

7. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)