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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) No.1101/2016

SURINDER KAUR

..... Petitioner

Through; Mr. Navin Arora for Mr. Sanjeev
Sagar, Adv.

versus

TATA MOTORS FINANCE CO

..... Respondent

Through: Mr. Amitabh Marwah, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.07.2017

1. Mr. Navin Arora, Advocate appearing for the petitioner states that he is not prepared to argue and Mr. Sanjeev Sagar, Advocate for the petitioner is out of station for some family work. Adjournment is sought.
2. The petition cannot be adjourned in this fashion. Mr. Sanjeev Sagar, Advocate, if so unable to appear himself, ought to have made appropriate arrangement for Mr. Navin Arora, Advocate or some other Advocate to address arguments.
3. The file has been perused and the counsel for the respondent / plaintiff has been heard.
4. This petition under Article 227 of the Constitution of India impugns the (order dated 19th July, 2016 in M. No.565/16 in Suit No.46/2010 of the Court of the Additional District Judge-01, New Delhi, Patiala House Courts, New Delhi) of dismissal of an application filed by the petitioner / defendant under Sections 10 and 11 of the Contempt of Courts Act, 1971.
5. The respondent / plaintiff instituted a petition under Section 9 of the Arbitration and Conciliation Act, 1996 against the petitioner / defendant

and vide order dated 30th June, 2010 therein Receiver was appointed to take possession of the vehicle financed by the respondent / plaintiff.

6. The petitioner / defendant filed the application aforesaid under Sections 10 and 11 of the Contempt of Courts Act averring (i) that though the respondent / plaintiff was directed to comply with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) but did not comply therewith; and, (ii) that though vide order dated 30th June, 2010 the respondent / plaintiff was restrained from selling the vehicle after taking possession thereof but had sold the vehicle, dismantled the same and created encumbrance thereon.

7. The learned Additional District Judge in the impugned order has recorded (i) that the order dated 30th June, 2010 did not direct compliance of Order XXXIX Rule 3 of the CPC; (ii) that post 30th June, 2010 there had been arbitration proceedings between the parties and the vehicle had been sold in compliance of the Arbitral Award; and, (iii) that after the Arbitral Award, orders in the earlier proceedings under Section 9 of the Arbitration and Conciliation Act in the nature of interim orders were of no avail.

8. I have minutely perused the facts as set-out in this petition and the grounds urged therein. The petitioner / defendant has stated that the petition under Section 9 of the Arbitration and Conciliation Act was withdrawn on 6th April, 2011 without taking any leave of the Court as to what was to be done of the vehicle, possession whereof was taken under an order in the petition under Section 9 of the Arbitration and Conciliation Act.

9. There is some merit in the contention of the petitioner / defendant of the respondent / plaintiff, after having re-possessed the vehicle in pursuance to an interim order of the Court, at the time of withdrawing that proceedings being required to restitute the benefit which had been obtained by an interim order in the Court. The respondent Tata Motors Finance Co. is indeed found to be in breach of the protocol required to be followed by it and is directed to be careful in this respect in future.

10. However the matter of contempt is between the Court and the alleged contemnor and in the entirety of the facts and circumstances, I do not deem it appropriate to interfere with the order of the learned Additional District Judge.

11. This is without prejudice to the question of very maintainability of this petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 21, 2017
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