

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CONTEMPT PETITION NO.54 OF 2014
IN
ARBITRATION PETITION NO.718 OF 2013**

M/s. Kotak Mahindra Prime Ltd.Petitioner
vs
M/s. Varun Industries Limited And 2 Ors. ...Respondents

.....
Ms. Avanti Mankar, i/b. Mr. Jitendra Shukla, for the Petitioner.

None for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: 6 MARCH 2019

P.C.:

. This contempt petition, filed under Section 12 of the Contempt of Courts Act, 1971, alleges a deliberate breach and violation of an ad-interim order dated 7 May 2013 passed by this Court as well as an undertaking given by the Respondents-contemnors to this Court vide consent terms dated 7 August 2013, which undertaking was accepted by this Court in the order dated 7 August 2013.

2. The Petitioner is a non-banking finance company engaged in the business of providing *inter alia* car loans. Respondent No.1 had availed of car loans for purchase of numerous vehicles under various loan agreements, all dated 27 February 2012, with the Petitioner. A total number of 44 vehicles were purchased by Respondent No.1 under this

facility. The other Respondents herein were guarantors for the facility. All vehicles were hypothecated in favour of the Petitioner. Fifteen of these car loan accounts were duly settled by the Respondents on or about 31 August 2012. The remaining twenty nine accounts, however, remained outstanding. There were defaults committed by the Respondents in repayment in these accounts. Since the loan agreements contained an arbitration clause, the Petitioner approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996 by different petitions for protective reliefs in respect of the vehicles, which were the subject matter of the loan agreements. At the hearing of these petitions, this Court passed the subject ad-interim order of 7 May 2013. By this order, Court Receiver, High Court, Bombay, was appointed as an ad-interim receiver in respect of the vehicles described in prayer clause (a) of the petitions. This Court also restrained the Respondents from alienating, transferring or creating any third party rights in respect of the vehicles, being the subject matters of the arbitration petition. The ad-interim order was challenged by the Respondents by separate arbitration appeals. The appeals were dismissed vide order dated 22 May 2013. In the meantime, further arbitration petitions were filed by the Petitioner in respect of some other vehicles, forming the subject matter of some other car loan defaults. During the pendency of all these petitions, i.e. arbitration petitions in which the ad-interim order of 7 May 2013 was passed and further arbitration petitions in respect of other defaults, the parties agreed to consent terms. These consent terms, dated 7 August 2013, were filed on the same day before this Court and final orders disposing of the arbitration petitions were obtained by the parties. In terms of these consent terms, which were taken on record in terms of the

order dated 7 August 2013, the Respondents undertook to this Court to make payment of a total outstanding amount of Rs.2,49,43,639/- in 17 equal monthly installments of Rs.14,67,287/- each starting from 1 November 2013 as per the schedules of payment ('A' and 'B') specified in Exhibit "A" to the consent terms. The Respondents undertook to make regular payments of EMIs.

3. The contempt petition is on the basis that the Respondents merely paid two EMIs from out of the 17 EMIs provided for in the consent order, though even these payments were not made within the agreed time schedule. It is submitted that in all four cheques (two towards payments mentioned in Schedule 'A' and two towards payments under Schedule 'B') were dishonoured upon presentation and the Petitioner had to pursue the Respondents-contemnors to seek payments in respect of these. As stated in the petition, only two particular payments for the months of November 2013 and December 2013 were thereafter cleared. According to the Petitioner, under the consent terms of 7 August 2013, a total sum of Rs.4,11,85,197/- is due and payable by the Respondents to the Petitioner as of the date of filing of the contempt petition. The Petitioner also submits that in their reply dated 4 April 2014, the Respondents have also indicated that they were not in possession of the vehicles, forming part of the subject matter of the loan agreements and for which Court Receiver was appointed in the order of 7 May 2013 and which the Respondents were restrained from disposing of or parting with possession of till the Receiver took possession thereof. It is submitted that the vehicles were disposed of and possession thereof was parted with by the Respondents in breach of the order dated 7 May

2013.

4. When the contempt petition came up for admission, none appeared for the Respondents. In view of the Petitioner's submissions that neither was any vehicle surrendered in response to the ad-interim order of 7 May 2013 nor was the payment schedule maintained by the Respondents, this Court was of the prima facie view that the Respondents had committed deliberate violation of the orders dated 7 May 2013 and 7 August 2013. A contempt notice was, accordingly, issued under the provisions of the Contempt of Courts Act, 1971 read with High Court Original Side Rules, calling upon the Respondents to show cause why action under these provisions should not be taken against the Respondents. The notice was made returnable on 14 September 2015.

5. The contempt notice along with the petition, however, could not be served on the Respondents, since the packet of service came back with the remark "not known". The Petitioner was, accordingly, permitted to serve the petition on the Respondents by substituted service through publication in local newspapers. The returnable date was extended to 16 March 2016. The contempt notice has been duly served, accordingly, through publication. Copies of public notices appearing in "Free Press Journal" and "Navbharat Times" are annexed to the Petitioner's affidavit dated 21 February 2019 in proof of such service.

6. The Petitioner claims that, in the first place, contrary to the ad-interim order passed by this Court in the arbitration petitions filed

initially, i.e. order dated 7 May 2013, the Respondents have disposed of and parted with possession of the vehicles, which were the subject matter of the ad-interim order. The order of the Court as well as the correspondence between the parties in this behalf is placed on record by the Petitioner. The Respondents do not appear or show cause. All averments of the Petitioner in this behalf are uncontroverted. These averments, supported as they are by documents placed on record, including the admission of the Respondents that they do not have possession of the vehicles, makes out a case of deliberate and contumacious defiance of the order passed by this Court, namely, the ad-interim order dated 7 May 2013.

7. So also, there is a clear case of breach of an undertaking given to this Court and accepted by it in its order dated 7 August 2013. The correspondence in this behalf, including the Respondents' letter seeking time to make payment, has been placed on record. Neither do the Respondents appear to show cause nor do they file any reply contesting the Petitioner's case of deliberate default in payment. In the premises, even as regards the undertaking given to this Court, and accepted and recorded in its order dated 7 August 2013, a case of deliberate breach by the Respondents is made out. There is no explanation whatsoever why the Respondents could not pay the installments agreed and undertaken to be paid under the orders dated 7 August 2013.

8. In these facts, a clear case of contempt of Court under Section 12 of the Contempt of Courts Act, 1971 has been made out

against the Respondent contemnors. In spite of due service of the contempt notice, the Respondents-contemnors neither appear nor show cause through filing of any reply. No apology is tendered or remorse expressed by the Respondents-contemnors for such contempt. Respondent Nos. 2 and 3, who are Directors of Respondent No.1 Company as well as guarantors under the various loan agreements between the parties, have been noticees on account of their being persons, who, at the time of the contempt, were in charge of and responsible to the first Respondent Company for the conduct of its business, and also in their individual capacity as Respondents-contemnors arraigned in the contempt petition herein. The Respondents are, thus, found guilty of contempt of Court. Respondent Nos. 2 and 3 are, accordingly, directed to be detained in civil prison for a term of three months from the date of their arrest. A warrant of arrest be issued accordingly.

(S.C. GUPTE, J.)