

Application No.6423 of 2019

PUSHPA SATHYANARAYANA, J.

This application has been filed by the applicant/finance company under Section 9 of the Arbitration and Conciliation Act, 1996, to appoint the employee viz. Mr.Pavan Kumar Sharma, Territory Manager - Collections as Receiver to seize and take possession of the vehicle which is morefully described in the schedule to the Judges Summons which is lying in the custody of respondent or respondent's men, servants, agents from his premises or wherever found with the police aid and break open of premises, if necessary.

2. The respondent availed of a vehicle loan from the Applicant-company and executed a loan cum hypothecation agreement No.MP3011TR01801 dated 02.06.2015, for a sum of Rs.4,80,000/- to be paid in 10 half yearly installments and the first installment commenced from 05.12.2015 and the re-payments were to run till 05.06.2020. It is stated that as of 16.08.2019, a sum of Rs.1,34,941/- is outstanding. In terms of the loan agreement executed by the respondent, the applicant/Finance company is entitled to re-possess the vehicle in the event of default committed by the respondent. It is also submitted that the continued use of the vehicle by the respondent would depreciate its value.

3. Notice sent to the respondent has been returned with an endorsement "refused" and affidavit of service is also filed to that effect enclosing returned cover. Though the name of the respondent is printed in the cause list, there is no representation for him either in person or through counsel.

4. Upon considering the facts and circumstances of the case, this Court is satisfied that the applicant has made out a *prima facie* case in its favour and accordingly, Mr. Pavan Kumar Sharma, Territory Manager - Collections of the applicant company is appointed as Receiver to take custody of the vehicle. The receiver will be entitled to take possession of the vehicle from the respondent or its agent or any one in possession thereof. If necessary, the Receiver shall get police assistance and the Station House Officer of the concerned Police Station, within whose jurisdiction the vehicle is found, will render requisite assistance for this purpose.

5. The agreement entered into between the applicant and the respondent provides for arbitration in the event of disputes and differences between the parties. The applicant shall commence arbitration proceedings and the Receiver shall preserve the vehicle

without alienating or encumbrance thereof till the arbitration proceedings are concluded or till orders are passed by this Court in this application. However, in case the respondent makes payment of the outstanding installments, the Receiver shall release the vehicle to the respondent. The receiver shall seize the vehicle within a period of eight weeks from the date of receipt of a copy of this order.

6. In view of the judgment passed in ***Firm Ashok Traders and another etc., v. Gurumukh Das Saluja and others etc.,*** reported in ***2004 (2) CTC 208***, it is made clear that if the applicant herein fails to initiate arbitration proceedings within a period of six weeks from the date of receipt of a copy of this order, the order made in this Application would stand revoked, without further orders.

7. Accordingly, this Application is closed.

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The counsel for the applicant is permitted to receive the certified copy of the order of the Receiver and communicate the same to the Receiver.

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