OD-48

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

IA No.: GA/1/2021
In APO/46/2021

BHARAT KUMAR SHAW AND ANR.
Versus
CHOLAMONDALAM INVESTMENT AND FINANCE COMPANY LIMITED

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date : 8th April, 2021.

*Appearance:*
*Mr. Pratip Mukherjee, Adv.*
*Mr. Arijit Ghosh, Adv.*
*...for the petitioners*

*Mr. Sourav Sarkar, Adv.*
*...for the respondent*

The Court : Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against the ex parte order dated February 12, 2021 passed by the learned Arbitrator.

Learned Advocate appearing for the petitioners submits that, the petitioners are ready and willing to pay a sum of Rs.1,40,000/- being the defaulted amount. The petitioners are also ready and willing to pay the monthly instalments in terms of the loan cum hypothecation agreement as if loan cum hypothecation agreement was not terminated, without prejudice to its rights and contentions.

Learned Advocate appearing for the respondent submits that, the respondent is ready and willing to accept the sum of Rs.1,40,000/- as part payment towards its claim and that, it is ready and willing to make over the possession of the vehicle subject to the petitioners paying the instalments under the loan cum hypothecation agreement. He submits that, the claims of the respondent be adjudicated upon by the learned Arbitrator.

Since the parties agree that, on payment of a sum of Rs.1,40,000/- and on continuation of the payments by way of monthly instalments by the petitioners commencing from the month of April, 2021 in terms of the loan cum hypothecation agreement as if such agreement was not terminated, it would be appropriate to direct the respondent to make over the possession of the vehicle to the petitioners. The respondent will do so upon receipt of a sum of Rs.1,40,000/-. The parties will make a joint inventory to the vehicle. The petitioners will continue to pay the monthly instalments commencing from April, 2021 as if the loan cum hypothecation agreement subsists between the parties. The payments will be made according to the Schedule of the loan cum hypothecation agreement.

In the event of default of payment of any of the instalments under the loan cum hypothecation agreement, the respondent is at liberty to take appropriate steps against the vehicle concerned.

There will be an order of injunction restraining the petitioners from creating any third party rights over and in respect of the vehicle. All points raised by the parties are kept open including the point of moratorium on interest payment as permitted by the Reserve Bank of India.

The respondent will adjust the sum of Rs.1,40,000/- first towards principal and then towards interest. The payment made by the petitioners and the acceptance thereof of the respondent are wholly without prejudice to the rights and contentions of the parties.

IA No.: GA/1/2021 and APO/46/2021 are disposed of accordingly.

(DEBANGSU BASAK, J.)

TO/S.Bag