

A.No.252 of 2021**P.T.ASHA.J.**

The above application is filed for a Garnishee order to the third respondent to withhold the salary of the second respondent every month to the extent contemplated under Section 60 of C.P.C. till a sum of Rs.1,90,681.39 is recovered, which is due and payable by the second respondent-Guarantor from the third respondent in whose Health Department, the second respondent is employed.

2. It is the case of the applicant that the first respondent had availed loan from the applicant for the purchase of a Maruti Alto 800 car and the second respondent had executed the said agreement as a co-borrower. The parties have executed a loan agreement on 31.12.2015. It is the case of the applicant that the principal amount of Rs.2,82,050/- together with finance charges was repayable in 60 equated monthly instalments of a sum of Rs.6,7,50/-p.m. The first instalment was payable on 10.02.2016 and the last of the instalments was due and payable on 10.01.2021.

3. The applicant would further contend that against total of 60 monthly instalments, only 42 instalments have been paid and 18 instalments remain unpaid. As per the terms of the Loan Agreement

dated 31.12.2015, the equated monthly instalments were payable by the respondents without any demand being made for the same and non payment of the instalment would entail levy of finance charges. The agreement also contains a dispute resolution Clause, in and by which, the parties had agreed to resolve the disputes by Arbitration. Under this provision, namely, Clause 29 of the Loan Agreement, the present application has been filed.

4. Since there was a default, the applicant, by a Loan Re-call notice dated 28.12.2020, called upon the respondents to pay a sum of Rs.1,85,693/-. There is no response to the said notice. Since the payments have not been made, the applicant has come forward with the present application.

5. Heard the learned counsel for the applicant and perused the records.

6. It is seen that after the filing of application under Section 9 of Arbitration and Conciliation Act, the contract has also come to an end on 10.01.2021. The amounts are yet to be paid. The respondents had been served notice in the above application on 25.02.2021. However, to-date, they have not appeared before this

Court.

7. Considering the fact that the respondents have not paid the monthly instalments, as undertaken by them and a sum of Rs.1,90,681.39 is due and owing from them, there shall be an order prohibiting the third respondent-Garnishee from making payment of that portion as contemplated under Section 60 of C.P.C from the monthly payment till the amount reaches a sum of Rs.1,90,681.39. The said amount shall be retained by the Garnishee till the award is passed in favour of the applicant and the applicant executes the said order in the manner known to law. It is made clear that the applicant shall initiate arbitral proceedings within a period of 30 days from today.

8. The Application is ordered accordingly. No costs.

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