IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.1161 of 2021

Abdul Majith .. Applicant

Vs.

1. M/s.HDB Financial Services Limited,
   New No.128/4F, Old No.53-A, 4th Floor,
   M.N.Office Complex,
   Greams Road, Chennai-600 006.

2. HDB Financial Services Limited,
   Ramaya Street,
   TMB Bank First Floor,
   Vandavasi, Tiruvannamalai-604 408.

3. HDB Financial Services Limited,
   44/30, First Floor, Sangushapet Street,
   Backside of Axis Bank,
   Kanchipuram-631 501, Kanchipuram District.

4. HDB Financial Services Limited,
   Plot Nos.79, 80 and 81,
   Shop Nos.6 and 7, First Floor,
   VND Complex,
   Nandhagopal Nagar,
   Thirukazhukundram Main Road,
   Near More Super Market,
   Chengalpet-603 001,

Chengalpet District. .. Respondents

Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules of this Court, read with Section 9 of the Arbitration and Conciliation Act read with Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (CPC), and the Application is filed, praying to direct the respondents, their men, servants or agents or anyone from in any manner re-possessing or taking delivery of the hire-purchased vehicle - Eicher 1090 bearing Registration No.TN-19-B-5032 which is in possession of the applicant.

For applicant : M/s.R.Hemalatha

For respondents: M/s.M.Nagalakshmi

ORDER

This application is filed direct the respondents, their men, servants or agents or anyone from in any manner re-possessing or taking delivery of the hire-purchased vehicle - Eicher 1090 bearing Registration No.TN-19-B-5032, which is in possession of the applicant.

2. In the affidavit filed in support of the application, it is stated by the applicant that he has availed financial assistance from the respondent-HDB

Financial Services Limited, to purchase Eicher 1090 vehicle and as a condition for the same, a loan agreement was entered by him with the third respondent on 21.08.2019. The total amount availed by the applicant under hire-purchase was Rs.5,02,785/-. With the said amount, the applicant purchased the said vehicle bearing Registration No.TN-19-B-5032 and he has been using it for transportation business. He did not default any single repayment of loan amount. The EMI commenced from 04.10.2019. He paid Rs.18,830/- regularly till March 2020. The loan amount is being credited from the Bank Account of the applicant with Karur Vysya Bank, Vandavasi Branch. Due to Covid Lock-down, his transportation business crippled and he could not generate income, which had resulted in non-payment of loan amount form April 2020 till September 2020. The Government of India and the Government of Tamil Nadu instructed the Banks and Financial Institutions not to demand re-payment of loan during the Corona Pandemic and to postpone such demand for some time.

3. It is the further case of the applicant that he re-commenced his business activities gradually and had sufficient balance in his Bank Account

as on 03.10.2020, with an outstanding balance of Rs.23,500/-. On 04.10.2020 alone, the respondents credited Rs.413/- for more than 55 times and entire sum of Rs.23,500/- was credited from his account in one lump-sum under the head 'inward remittance'. The Karur Vysya Bank and the respondents did not respond the applicant about the one-time credit of such transaction. Thereafter, the applicant paid @ Rs.18,830/- to the official of second respondent in person for the months of November and December 2020 and January and February 2021.

4. The applicant duly does not disown his liability to re-pay the loan amount. Though the applicant was ready and willing to pay the amounts and to regularise the period of non-payment from April 2020 to September 2020, the personnel attached to the respondents-financial institution insisted for payment of entire loan amount and even there was also a threat to the applicant.

5. In the above fact situation, the applicant sent a notice dated 25.02.2021 to the first respondent calling upon the respondents to desist

from demanding re-payment of entire loan in one lump-sum and permit him to re-pay the loan amount month after month. A reply dated 02.03.2021 was sent by the fourth respondent, in which, the earlier amount of Rs.413/- credited for 55 times, had not been explained and the respondents demanded re-payment of entire loan amount within 15 days. From the said reply, the applicant could infer that the respondents may re-possess the vehicle purchased through hire-purchase scheme to recover the loan amount. Hence, the applicant has filed the present Application for the relief stated supra.

6. The respondents have filed counter affidavit admitting the grant of vehicle loan to the applicant, and inter-alia stated that the applicant was irregular in payment of instalments and committed default from 7th instalment which fell due on 04.03.2020. Due to nation-wide lock-down on account of Covid-19, the respondents had granted moratorium for the period from 01.04.2020 to 31.07.2020. The applicant had thus paid only 9 instalments and committed default thereafter. The respondents deny the amount of Rs.413/- debited 55 times from the applicant's Bank Account and that the applicant did not produce any proof for such debit from his account.

The dispute which the applicant had risen in the application, is not the subject matter of the arbitration agreement executed between the parties. Apart from the vehicle loan, the applicant had also taken personal loan bearing No.9630040, in which also, he committed default in paying the instalments. He cannot seek an order from this Court from not to re-possess the vehicle which is hypothecated with the respondents. The applicant has not come before the Court with clean hands and the balance of convenience is not in favour of the applicant. Thus, the respondents prayed for dismissal of the application.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Upon perusing the records, this Court finds that under no circumstances, this kind of application can be entertained, as the parties are bound to act as per the contractual agreement entered upon between them. When any action is initiated by the respondents-Company against the defaulting party, within the framework of the business agreement, the Court

cannot injunct the respondent-Company from enforcing the lawful conditions of the agreement. Thus, this application is not maintainable and the same is dismissed as devoid of merits. No costs.

06.08.2021

Speaking Order: Yes

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V. PARTHIBAN, J

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