

02.05.2022
S/L No.13
KS

F.M.A. 554 of 2022
Nachim Ali Mondal
-Vs.-
HDB Financial Services Limited

Mr. Pratip Mukherjee
Mr. Sayak Ranjan Ganguly
Mr. Omar Faruk Gazi
Ms. Srijani Ghosh

.....For the Respondent

The appellant is not represented nor any accommodation is sought for on behalf of the appellant.

The respondent is represented by Mr. Pratip Mukherjee.

The appeal arising out of an order dated 3rd March, 2022 passed in connection with an application filed under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure in a suit restraining the respondent from taking possession of the vehicle. The plaintiff purchased a vehicle under a hire purchase agreement from the defendant. The plaintiff alleged that during Covid period the plaintiff could not make payment of the installment amounts required to be paid under the hire purchase agreement and the finance company that is the defendant without

considering the genuine reason for which the installment could not be paid was in the process of taking forcible possession of the vehicle from the plaintiff. The Learned Trial Judge upon consideration of the material on record restrained the defendant/finance company from taking possession of the vehicle till 1st April, 2022 subject to the condition that the plaintiff shall pay the admitted monthly installment to the defendant till further order. In the grounds of appeal it is alleged that the Learned Trial Court has failed to consider that due to Pandemic situation the appellant was unable to make payment of the E.M.I.s as no income was generated by use of the said vehicle and accordingly, no conditional order of stay could have been granted by the Learned Trial Court. We are unable to appreciate the grounds on which the prayer for admission of the appeal have been made. The obligation of the plaintiff to make payment of the installment amounts remains undisputed. If there are reasons for which the installments could not be paid in time and there could be a case made out for restructuring of the installments, the plaintiff is required to approach the defendant with such

request and in the event of non-consideration of such request to approach the Court for appropriate reliefs. Unless the situation is exceptional the Court shall not extend time under the garb of Covid – 19 Pandemic situation. The learned advocate for the defendant submits that even the admitted monthly installments have not been paid. If however, the interim order was till 1st April, 2022 and as on date the said order has lost its force.

Learned advocate for the respondent submits that an application was filed under Section 5 and 8 of the Arbitration and Conciliation Act is pending before the Learned 5th Bench, City Civil Court, Calcutta in connection with T.S. No.465 of 2022, we request the Learned Judge, 5th Bench, City Civil Court, Calcutta to dispose of the application under Section 5 and 8 of the Arbitration and Conciliation Act as expeditiously as possible.

We do not find any merit to interfere with the ad interim order passed by the Learned Trial Judge, at this stage.

Accordingly, the appeal is dismissed.

However, there should be no order as to costs.

(Sugato Majumdar, J.)

(Soumen Sen, J.)