

14 28.9.2022

Ct-08

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FMA 1171 of 2022

with

I.A No. CAN 1 of 2022

Tata Motors Finance Ltd.

Vs.

Ashok Garai

Mr. Pratip Mukherjee
Mr. Sayan Ranjan Ganguly
Ms. Srijani Ghosh
... For the Appellant

Mr. Sohanlal Adak
Ms. Taniya Mondal
... For the Respondent

Affidavit of service filed in court be kept with the record.

The appeal is directed against the order dated 1st August, 2022 in a suit filed by the respondent praying, inter alia, for permanent injunction and other consequential reliefs. In the suit an application has been filed under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure for injunction restraining the appellant from taking forcible possession of the vehicle in question.

Learned counsel appearing for the appellant submits that the plaintiff has suppressed the fact that before filing of the suit, an award was passed by the learned trial judge on 9th May, 2022. However, he has candidly submitted that he is presently unaware of the fact whether such award has been served upon the plaintiff or not.

In any event, it is submitted that the financial agreement contains an arbitration clause and in view thereof, the suit is not maintainable.

Our attention is drawn that an application was filed by the respondent under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure for dismissal of the suit on the ground that an award has been passed and in view of existence of the arbitration clause, the suit cannot be proceeded.

Be that as it may, it appears that keeping the said application pending, interim order was extended from time to time. We have been informed that the matter is fixed in the trial court on 6th December, 2022.

The Finance Company submits that the plaintiff is required to pay a sum of Rs.43674/- as E.M.I and as on date a sum of Rs.3,47,328/- is due and payable.

Since the appellant cannot take forcible possession of the vehicle in question without putting the award into execution, for the time being subject to payment of Rs. 1.50 lakhs to be paid by the plaintiff by 30th November, 2022, interim order passed by the trial court shall continue. In default, the appellant shall be at liberty to take appropriate steps for recovery of the vehicle in accordance with law.

However, it is found from the record that an award passed was duly communicated to the plaintiff, the trial court may not have the jurisdiction to proceed with the matter at all. We make it clear that on the returnable date the trial court shall first decide the maintainability of the suit and if satisfied, to proceed with the matter in accordance with law.

In view of the above, the appeal stands disposed of along with CAN 1 of 2022.

(Uday Kumar ,J.)

(Soumen Sen, J.)