

05 14.03.2023

Ct-08

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FMAT 501 of 2022

with

I.A No. CAN 2 of 2023

Indusind Bank Ltd.

Vs.

Sahanara Bibi & Ors.

Mr. Sayak Ranjan Ganguly

Ms. Srijani Ghosh

... For the Appellant

Mr. Biswajib Ghosh

Mr. Abhishek Agarwal

Mr. Amir Ali

Ms. Rupa Singh

... For the Respondents

We have heard the learned counsel appearing for the parties.

Ms. Srijani Ghosh, learned counsel for the appellant submits that in terms of our earlier order a sum of Rs.1,00,000/- has been received by the appellant. As on date admittedly a sum of Rs.70,000/- is due towards four instalments, which have not been paid in full.

We direct the respondent to pay the balance amount of Rs.70,000/- in order to regularise the payment that became due in respect of four E.M.Is within four months from date. The appellant, however, shall continue to pay the current E.M.I at the rate of Rs.42510/- strictly in terms of the agreement. In default, the appellant shall be entitled to repossess the vehicle in accordance with law.

The instalment for the month of March 2023 shall be paid on or before 21st March, 2023 and all the future instalments shall be paid within the time mentioned in the hire purchase agreement.

In view of the fact that there is an arbitration clause in the agreement we feel that the suit filed by the appellant and the application filed in the said suit may be treated as an application under Section 9 of the Arbitration and Conciliation Act, 1996 and this order shall be deemed to have been passed in the said proceeding. This order shall dispose of the suit and the application pending before the 12th Bench, City Civil Court, Kolkata.

In view of the special circumstances for which the respondent could not pay the E.M.Is in time and also having regard to the fact that the trial court has reduced the E.M.I considering the hardship of the respondent, the appellant, as a special case, shall not charge any penal interest, subject to the compliance of this order.

The appellant shall make appropriate changes in the hire purchase agreement consequent upon the death of the original borrower and shall issue NOC in favour of the respondent upon the entire amount being paid.

With the aforesaid direction, the appeal and the application being CAN 2 of 2023 stand disposed of.

There shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)

