

OCD-5

ORDER SHEET

AP/728/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SADIKUL ISLAM
Versus
HDB FINANCIAL SERVICES LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th December, 2023.

Appearance:

Mr. Subir Banerjee, Adv.
Mr. Somnath Adhikary, Adv.
Mr. Surajit Basu, Adv.
...for the petitioner

Mr. Pratip Mukherjee, Adv.
Mr. Sayak Ranjan Ganguly, Adv.
Ms. Srijani Ghosh, Adv.
...for the respondent

The Court: The dispute between the parties arises out of a loan-cum-hypothecation agreement dated 15th February, 2019 by which the petitioner took a loan of about Rs.22.38 lakhs from the respondent for purchase of a vehicle. The petitioner claims that the petitioner repaid the entire loan but the respondent, nonetheless, seized the vehicle when the vehicle was plying on the roads.

The petitioner moved the writ jurisdiction of this Court and by an order passed by a co-ordinate Bench on 5th April, 2023, the Court recorded the respondent's submission that taking possession of the vehicle post-payment was not legal.

The petitioner thereafter issued a notice of demand on the respondent and ultimately a Notice under Section 21 of the Act on 11th July, 2023. The respondent has not replied to the said Notice.

The petitioner claims damages of approximately Rs.32 lakhs.

There is certainly a dispute between the parties which would also be evident from the order in the writ proceedings filed by the petitioner. The respondent has no defence in taking possession of the vehicle.

Learned counsel appearing for the respondent submits that the petitioner has not repaid the entire amount and the respondent also replied to the demand notice.

The petitioner's claim for damages hence should be adjudicated by an Arbitrator. The dispute is covered under the arbitration clause in the loan-cum-hypothecation agreement.

AP/728/2023 is accordingly allowed and disposed of by appointing Mr. Varun Kothari, Counsel to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 15th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)