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Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

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ABDUL QUDDHOSE, J.

These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for sale of the vehicles which are morefully described in the schedule to the respective Judges Summons.

2. The applicant is a non banking financial institution. It had lent money to the first respondent under six different loan contracts for the purchase of four different vehicles. The first respondent had agreed to pay the total loan amounts in equated monthly instalments. According to the applicant, the first respondent committed default in the repayment of the loan as per the terms and conditions of the loan agreements. The respective loan agreements contain an Arbitration clause. In terms of the loan agreements, the applicant initiated Arbitration and an Arbitrator was appointed. The first respondent had also participated in the Arbitration and had raised defences with regard to the claim made by the applicant. On contest, the sole Arbitrator passed six Arbitral Awards, all dated 06.03.2023 directing the first respondent to pay the applicant the



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

sums of money as detailed in the respective Arbitral Awards. Thereafter, an application under Section 33 of the Arbitration and Conciliation Act, 1996 was filed by the applicant before the Arbitrator seeking for amendment of the Arbitral Award pertaining to cause title and calculation alone. The said application was also allowed by the Arbitrator on 18.04.2023. Under the respective loan contracts, the applicant is entitled to repossess the vehicle from the first respondent, in case the first respondent commits default in the repayment of the loan to the applicant. Exercising the said power, the applicant had re-possessed the construction vehicles from the first respondent on 23.09.2022, pursuant to an order passed by the sole Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. The subject vehicles are now lying idle. According to the applicant despite an Arbitral Award having been passed by the Arbitrator in respect of all the six contracts and a sum of Rs.2,97,20,643.21 is due and payable by the first respondent to the applicant as per the Arbitral Awards as on 19.06.2023, the applicant is unable to sell the re-possessed vehicles on account of the first respondent unlawfully preventing the applicant from selling the same.

3. Since the vehicles are remaining idle, the applicant has filed



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

WEB COPY

these applications seeking for sale of the re-posessed vehicles, which are the subject matter of the six loan contracts.

4. A counter affidavit has been filed by the respondent stating that the present applications are not maintainable. According to the respondents, if at all the applicant is having any remedy they ought to have filed an Execution Petition as per the provisions of Section 36 of the Arbitration and Conciliation Act, 1996. They would also state that they are in the process of filing an application to set aside the Arbitral Awards which have been passed against them.

5. Learned Senior Counsel appearing for the applicant drew the attention of this Court to Section 9 of the Arbitration and Conciliation Act, 1996 and would submit that this Court is having the power to grant an order of sale of the re-posessed vehicles as till date, no application has been filed by the respondent under Section 34 of the Arbitration and Conciliation Act, 1996 to challenge the Arbitral Awards passed against them. Further, he would state that there is no embargo on the Court from passing an order for sale of the re-posessed equipment as an application can be filed under Section 9 of the Arbitration and Conciliation Act, 1996



either before, during or after an Arbitral Award is passed.

6. He would also draw the attention of this Court to the respective Arbitral Awards passed against the first respondent and he would submit that even though in the respective Arbitral Awards, the Arbitrator has stated that the claimant is entitled to execute the Award against the subject vehicles, there is no legal prohibition for the applicant for filing an application under Section 9 of the Arbitration and Conciliation Act, 1996 for sale of the re-posessed vehicles. He would also submit that the vehicles are deteriorating in value as the said vehicles were re-posessed in the month of September 2022 and is still lying idle. He would further submit that only to protect the interest of the applicant as well as the respondents and to mitigate their respective losses, these applications have been filed under Section 9 of the Arbitration and Conciliation Act seeking for sale of the re-posessed vehicles.

7. On the other hand, the learned counsel for the respondents would reiterate the contents of the counter affidavit filed in these applications. He would submit that the present applications are not maintainable since applications under Section 9 of the Arbitration and Conciliation Act, 1996 can be entertained only to grant an interim



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

WEB COPY

protection to secure the claim of the applicant. He would submit that if the vehicles are allowed to be sold at the stage when the respondent is proposing to challenge the Arbitral Awards and the time period for challenging the same is not over, the respondents will be put to irretrievable loss and hardship on account of the loss of the assets which are the subject matter of the disputed loan contracts. He would also submit that an Arbitral Award cannot be enforced by filing an application under Section 9 of the Arbitration and Conciliation Act. He would also submit that the respondents are also contemplating to challenge the Arbitral Awards, which have been passed against them under Section 34 of the Arbitration and Conciliation Act and therefore, the question of entertaining these applications at this stage will not arise. He would also submit that as seen from the Arbitral Awards itself, the sole Arbitrator has given liberty to the claimant i.e., the applicant herein to execute the Award against the subject vehicles by filing an Execution Petition and therefore, if at all the applicant desires to sell the re-possessioned vehicles, the remedy is only to execute the Arbitral Awards passed in their favour.

Discussion



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

WEB COPY

8. As seen from the Arbitral Awards, the first respondent has committed default in the repayment of the loan under the respective loan contracts entered into with the applicant. The applicant is also entitled to re-possess the hypothecated vehicles from the respondents in case, the first respondent commits default in the repayment of the loan. The applicant has exercised its power to re-possess the vehicles only through an order passed by the sole Arbitrator passed under Section 17 of the Arbitration and Conciliation Act. The subject vehicles were re-possessed by the applicant as early as in the month of September 2022 itself and it is still lying idle facing the vagaries of nature. The respective loan contracts also permit the respective applicants to sell the re-possessed vehicles. Six Arbitral Awards have also been passed by the sole Arbitrator against the first respondent. The applicant has also filed a Statement of Account before this Court and as seen from the said Statement of Account, a sum of Rs.2,97,20,643.21 is due and payable by the first respondent to the applicant in respect of the six Arbitral Awards as on 19.06.2023.

9. Applications alleged to have been filed by the first respondent



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

WEB COPY

challenging the Arbitral Awards passed against them are yet to be numbered by the Registry of this Court, though the respondent may state that they have already filed such applications before the Registry of this Court.

10. The subject vehicles are Volvo Tipper vehicles. Any vehicle for that matter if it is remaining idle will deteriorate in value. No useful purpose would be served, if the applicant is not allowed to sell the re-possessed vehicles that too in a case, where the first respondent is a defaulter in the repayment of the loan and the applicant is also empowered under the terms and conditions of the agreement, to repossess and sell the vehicles in case of default. The vehicles were seized in the month of September 2022 itself and almost a year has elapsed since then. The respondents have also not disputed the fact that they had committed default in the repayment of the loan to the applicant as per the terms and conditions of the respective loan contracts. Necessarily, the applicant will have to take all effective steps to mitigate its loss by selling the re-possessed vehicles. In fact, the sale of the re-possessed vehicles will also reduce the liability of the respondents to the applicant under the



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

WEB COPY

respective loan contracts. The balance of convenience is also in favour of the applicant for the sale of the re-possessed vehicles. The application for sale of the re-possessed vehicles protects the interest of both the applicant as well as the respondents as the sale will mitigate the loss of the applicant and also reduce the liability of the respondent to the applicant under the respective loan contracts.

11. Section 9(ii)(c) of the Arbitration and Conciliation Act, 1996 makes it clear that even for sale of any of the goods, which are the subject matter of the arbitration agreement, an application under Section 9 of the Arbitration and Conciliation Act, 1996, is maintainable. Admittedly all the re-possessed vehicles are the subject matter of the loan agreements and they have also been hypothecated with the applicant as a Security for the repayment of the loan amounts.

12. Section 9 of the Arbitration and Conciliation Act, 1996 makes it clear that an application can be filed either before, during or after the pronouncement of the Arbitral Award but before its enforcement.



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

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13. Admittedly in the instant case, the respective Arbitral Awards are all dated 06.03.2023 and the time for filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 to challenge the said Arbitral Awards is not yet over. The applicant cannot also file the execution petition to execute the Arbitral Awards against the first respondent since the time limit for challenging the Arbitral Awards is not yet over. The re-possessed vehicles cannot also be allowed to face the vagaries of nature and if the sale is not allowed, the vehicles may become a wreck, which will not benefit either the applicant or the first respondent.

14. The outstanding amount payable by the first respondent to the applicant under the respective Arbitral Awards is a huge amount. Any further delay to sell the re-possessed vehicles will be detrimental to the interest of both the applicant and the respondent as the vehicles continue to deteriorate in value.

15. For the foregoing reasons, this Court is of the considered view that the applications filed by the applicant seeking for the reliefs sought



Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

for are maintainable and they are entitled for sale of the subject vehicles through an e-auction by giving wide publicity. However, it is always open to the respondents to question the sale price obtained by the applicant, while selling the subject vehicles at any stage, whenever a challenge is made by them before any Court of law.

16. Accordingly, these applications are allowed as prayed for in Arbitration Application Nos.255, 256, 257, 258, 259 and 260 of 2023 and the applicant is permitted to sell the construction equipments morefully described in the respective Judges Summons through an E-auction by giving wide publicity and the respondent is also granted liberty to question the sale price whenever a challenge is made them to the Arbitral Awards before any Court of law.

05.07.2023

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Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

Arbitration Application Nos.255, 256,
257, 258, 259 and 260 of 2023

05.07.2023