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| Item-11. | 12-11-2024 | FMAT (Arbaward) 34 of 2024<br>CAN 1 of 2024                                             |
| sg       | Ct. 12     | HDB Financial Services Limited<br>Versus<br>Vasathakumary NA @ Vasanthakumari NA & Anr. |

Mr. Pratip Mukherjee  
Mr. Sayak Ranjan Ganguly  
Ms. Srijani Ghosh  
Ms. INdrani Majumder  
...for the appellant

Mr. Malik Uddin  
Mr. Subhadip Pramanik  
Ms. Arandita Roy  
Ms. Khushi Shaw  
...for the respondents

1. The appeal is arising out of an order passed in Misc. Case No. 937 of 2024 in connection with an application filed by the awarded-debtor under Section 9 of the Arbitration and Conciliation Act on 4<sup>th</sup> March, 2024.
2. There is no dispute that under a known agreement one Toyota Kirloskor Motor and Innova 2.5 V E4, as specified in the agreement, were given on hypothecation to the award-debtor. Disputes and differences arose between the parties and in a prior proceeding initiated under Section 9 of the Arbitration and Conciliation Act, a Receiver was appointed by the learned Trial Court. Thereafter, the arbitration proceeding commenced on and from 3<sup>rd</sup> January, 2024. An award was passed and published by the sole Arbitrator and copy of the said award was forwarded to the parties on 11<sup>th</sup> March, 2024. Time to challenge the award has expired in the meantime.

3. On 4<sup>th</sup> March, 2024, the injunction application filed by the award-debtor was taken up for consideration in which the learned Trial Judge, taking into consideration an award passed on 16<sup>th</sup> October, 2023, observed that the vehicle ought to have been in the possession of the sole Receiver and not in the possession of the financier and thereby allowed the application by the impugned order dated 31<sup>st</sup> July, 2024 and restrained the award-holder from dealing with the said vehicle till the disposal of the said petition or till the vehicle remains in their possession, whichever is earlier. Furthermore, the appellant was directed to pay costs of Rs.2 lakhs.
4. It appears that the award-debtor has adopted an ingenuous method to challenge the award by filing an application under Section 9 of the Arbitration and Conciliation Act in a post-award situation without challenging the award itself. It is an admitted position that as on date, the said award has now become enforceable. The learned Trial Court seems to have overlooked this aspect of the matter while restraining the appellant to deal with the vehicle as under Clause 25(ii) of the Award, the appellant is entitled to the possession of the said vehicle.
5. On such consideration, the appeal is allowed. The impugned order is set aside.
6. The learned Counsel for the appellant, on instruction, submits that in the event a sum of Rs.3.50 lakhs is paid by 31<sup>st</sup> December, 2024, the award-holder is willing to accept the said amount as full and final settlement and shall release

the vehicle.

7. In the event the said amount is paid by the award-debtor within the aforesaid period, the vehicle shall be returned in favour of the award-debtor in a good condition and the Receiver shall stand discharged.
8. The award-holder shall also issue a no-due certificate in favour of the award-debtor within a week from the date of payment. In default, the award shall become enforceable.
9. The appeals and the connected application are accordingly disposed of.
10. Urgent photostate certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**(Soumen Sen, J.)**

**(Ajay Kumar Gupta, J.)**