17.12.2024
Sl No.1
Court No.37
(gc)

FMA 1093 of 2024
CAN 1 of 2024

Kotak Mahindra Bank Ltd.
Vs.
DMP Logistics Pvt. Ltd. & Anr.

Mr. Shounak Bhattacharya,
Mr. Shibnath Bhattacharjee,
Mr. Abhishek Bhattacharjee,
Mr. Abhirup Halder
...for the Appellant.
Mr. Abhilash Chatterjee
....for the Respondents.

1. In view of the admitted position that the Receiver was appointed on 29th June, 2024 and the letter of the Finance Company was of 1st July, 2024 by which the Finance Company has informed the borrower that the possession of the vehicle has been repossessed and the borrower may take possession of the goods within 5 days from the date of receipt of the notice, failing which, the goods may be dumped in the godown at the risk and peril of the borrower, the learned Trial Court disregarding the fact that huge amount is due and payable towards the rentals and the said letter of the borrower was subsequent to the appointment of the Receiver could not have directed the Receiver

to return the vehicle to the borrower without insisting the borrower to make some payment at least the admitted dues or a portion of the admitted dues to show its bona fide. Even in this proceeding, at the admission stage, we directed the borrower to pay a sum of Rs.10 lakhs as admittedly a sum of over Rs.10 lakhs is due and payable under the loan-cum-hypothecation agreement, the borrower has failed to deposit the said amount. In fact, in our order dated 12th December, 2024 we have specifically stated that the vehicle shall be handed over to the respondent upon payment of Rs.10 lakhs. This amount has not been paid.

2. The learned Counsel for the appellant/petitioner, however, draws our attention to the notice dated 4th June, 2024 in which the appellant has demanded a sum of Rs.5,55,732.00 towards the arrear of instalments due from 15th December, 2023 to 15th May, 2024. The possession of the vehicle was taken on 29th June, 2024.

3. Taking into consideration the aforesaid facts and that it has been assured that the respondent shall pay Rs.6 lakhs on or before 31st December, 2024, we direct the appellant to release the vehicle upon receipt of a sum of

Rs.6 lakhs and permit the appellant to reschedule the EMIs after giving adjustment of the amounts to be paid and the quantum of instalment shall remain the same in terms of this order. The said payment shall be appropriated first towards the principal. The arrear of instalments for the month of June, 2024 till December, 2024, since the respondent was out of possession, may be waived and the 10^{th} instalment may commence from January, 2025 and a reschedule payment terms may be drawn by the appellant.

4. It is made clear that in the event of any future default for payment of the instalments, the appellant shall be entitled to repossess the vehicle in accordance with law. The Receiver shall hand over the vehicle to the respondent subject to payment of Rs.6 lakhs by 31^{st} December, 2024. In default, the Receiver shall be in possession of the vehicle and the parties shall initiate proceedings for appointment of an Arbitrator.

5. The appeal and the application are, accordingly, disposed of.

6. However, there shall be no order as to costs.

7. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)