IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.91 OF 2024

M/s. Mercedes Benz Financial
Services India Pvt.Ltd.
(Formerly Known as Daimler Financial
Services India Pvt. Ltd.)
Through its Authorized Representative
Nagesh S/o Ganu Gawde
Age: 39 years, Occu: Service
Having Registered Office Address at,
5th Floor, Plot No.8, Baashyam Willow Square,
9 & 10, First Street, Thiruvika Industrial Estate,
Guindy, Chennai-600032. ...Petitioner

vs.

1. The State of Maharashtra
through DCB CID Unit-10.

2. Lubna Azaan Vazir
R/o. Flat No.C-1201, 12th Floor,
Adani Wester Heights, JP Road,
Andheri West, Mumbai.

3. Amit Ramesh Thadani
R/o. B-23, the Self Help CHS LTD,
St. Francis Road, Vile Parle West, Mumbai.

4. Azaan Ali Vazir
R/o. Flat No.C-1201, 12th Floor,
Adani Wester Heights, JP Road,
Andheri West, Mumbai. ...Respondents

Mr. Mahesh Deshmukh with Ms. Bijal Gogri i/b GNP Legal for the Petitioner.

Ms. P. P. Bhosale A.P.P. for the Respondent-State.

Mr. Bhalchandra S. Shinde with Mr. Inamullah Shaikh for Respondent Nos.2 and 4.

Mr. Dhanraj Chaudhari, API, DCB CID, Unit-10, Mumbai present.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 3rd OCTOBER, 2024
PRONOUNCED ON : 16th OCTOBER, 2024

JUDGMENT :

. Present Petition seeking for quashing and setting aside of the impugned Judgment and Order dated 1st November, 2023 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.1014/2022 and the impugned Order dated 19th October, 2022 passed by the 37th Court of learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in Misc. Application No.1472/2022 in C.C.No.120/PW/2022.

1.1) Additionally, Petition prayed to allow said Misc. Application filed by the Petitioner under Section 451 of Cr.P.C., claiming custody of vehicle i.e. Mercedes Benz CLA 200D bearing registration No.MH-02-FE-5432, Chassis No.WDD1173086L012056 and Engine No.65193034929805 with permission to sale the said vehicle (‘*the car*’, for short).

2) Despite notice Respondent No.3 did not appear and file appearance, however, before trial Court he gave no objection to give the car in custody of the Petitioner. The car is costly. It was purchased out of the loan amount, which is a public money. Pursuant to the arbitral proceedings the car is subject matter of the recovery of the loan. Each day, the car is loosening its road-worthiness as well as its market value, which has an adverse impact on the loan amount to be recovered. Mr.Dhanraj Choudhari, Assistant Police Inspector, DCB, CID, Unit-X, Mumbai conveyed that, he has no objection to release the car in the custody of the Petitioner. Learned counsel for Respondent Nos.2 and 4 stated that, Respondent No.2 is principal borrower, Respondent Nos.3 and 4 are guarantors and, on written instructions, Respondent Nos.2 and 4 he have no objection to allow the Petition, as prayed. Hence, taken up for hearing.

3) Heard learned Counsel Mr.Deshmukh for Petitioner, learned A.P.P. Ms. Bhosale for Respondent No.1-State and learned Advocate Mr.Shinde for Respondent Nos.2 and 4. Perused the Petition. None appeared for Respondent No.3.

4) The submissions advanced by learned counsel for the Petitioner are identical to the grounds stated in the Petition.

5) Learned A.P.P. stated that, in view of no objection for Respondent No.1-DCB-CID and considering the facts, necessary orders may be passed, in the interest of justice.

6) The facts giving rise to present Petition are that, the Petitioner is a Non-Banking Finance Company (formerly known as M/s. Daimler Financial Services India Pvt. Ltd.). Under a 'Loan Agreement' dated 5th August, 2019, Respondent Nos.2, 3 and 4 availed a finance facility for a sum of Rs.31,00,000/- on certain terms and conditions to purchase the car. A deed of Hypothecation dated was also executed whereby the car was Hypothecated in favour of the Petitioner as a security for the total amount repayable under the loan Agreement. That, the borrower/Respondents committed default in repayment of the loan, therefore, Petitioner initiated arbitration proceedings against Respondent Nos.2 to 4. The Arbitral Award has been passed and Respondent Nos.2 to 4 have been directed to pay the outstanding loan amount of Rs.32,05,420/- plus interest and that, if Respondent Nos.2 to 4 fail to comply with the terms and conditions of

Agreement and failed to pay the said amount, then the Petitioner will be entitled to recover possession of the car. Thereafter, the Petitioner learnt that Cr. No.467/2021, under Sections 170, 342, 364A, 384, 385, 388, 389, 392, 120B of the I.P.C. came to be registered with Andheri Police Station, Mumbai against Respondent No.2 and others. Thereafter, investigation was handed over to DCB CID, Unit-X, where said crime was re-registered as C.R.No.87/2021 was substituted by DCB CID. That police seized the car during investigation of the said crime. On completion of the investigation, police submitted charge-sheet and it is registered as C.C.No.120/PW/2022.

7) In the backdrop, the Petitioner filed the Miscellaneous Application No.1472 of 2022 in C.C.No.120/PW/2022 seeking for custody of the car and permission to sell the same to appropriate the sale proceeds towards the balance loan recoverable under the Loan Agreement.

8) Learned A.P.P. appearing before the trial Court and Respondent Nos.2 and 4 filed say and objected to release the car in the custody of the Petitioner.

9) After hearing the parties, the trial Court rejected the Misc. Application No.1472/2022 for the reasons that, Arbitration Award has been already passed. The Petitioner can recover the possession of the car if Respondent Nos.2 to 4 failed to pay the arrears of the loan. The dispute is of civil nature. The Petitioner is seeking permission to sell the car by auction and to appropriate the sale proceeds towards the Loan Agreement.

10) The Petitioner challenged said rejection in Criminal Revision Application No.1014/2022, and relying upon the decisions in :-

(i) Sunderbhai Ambalal Desai Vs. State of Gujarat[1]

(ii) General Insurance Council & Ors. Vs. State of Andhra Pradesh and Ors.[2]

(iii) Tata Motors Finance Ltd. Vs. The State of Maharashtra & Anr.[3]

(iv) Equitas Small Finance Bank Ltd. Vs. The State of Maharashtra & Anr.[4]

11) Respondent No.1-State through DCB CID, Unit-X filed its reply and objected to handover the custody of the car to the Petitioner.

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1 (2002) 10 Supreme Court Cases 283
2 (2010) 6 Supreme Court Cases 768
3 Cri. Writ Petition No.620 of 2016 dt. 10/01/2017
4 Cri. Application No.1307 of 2018 dt. 17/07/2019

12) After hearing the parties, the learned Additional Sessions Judge dismissed the Revision for the reasons that the car is registered in the name of respondent No.2, therefore, she is entitled for custody of the car. The Petitioner is the financier and has obtained the Arbitration Award wherein it was directed that upon repossession of the car a report shall be filed before the Tribunal, the car shall be preserved and shall not be alienated until further orders of the Tribunal. That receiver has been appointed in the Award to take custody of the car. The Petitioner is entitled to execute the Arbitration Award. The Petitioner can take the appropriate recourse to recover the loan amount. Therefore, the Petitioner cannot directly request the Court to give the custody of car and permit to sale the car.

13) There is no dispute that Respondent Nos.2 to 4 purchased the car availing the loan from the Petitioner. The loan Agreement is produced on record and clauses 51 and 51.1 thereof read as under :-

> *"51. On the happening of any of the Events of Default, the lender may at its option by a notice in writing to the Borrower(s) and without prejudice to the rights and remedies available to the Lender under Law, equity or under the Loan Agreement or any other Transaction Document or otherwise, declare the Borrower's Dues in*

respect of the all or any of the Loans (as may be required by the Lender) and/or (b) declare the Security created in terms of / pursuant to the Loan Agreement and/or the other Transaction Documents to be enforceable and accordingly invoke the Security, and the Lender, its representatives and/or person in favour of whom any Security or any part thereof is created shall have, inter alia, the following rights (notwithstanding anything to the contrary in the Loan Agreement and/or the other Transaction Documents and irrespective of whether the entire Loan or Borrower(s) Dues has/have been recalled) namely:

51.1 To enter upon and take possession of the Asset(s) in accordance with the provisions of the Loan Agreement and as per the guidelines issued by the regulator/s and Apex Court while doing the repossession of the vehicle."

14) On a plain reading of aforesaid clauses, it is clear that in the event of default in payment of loan amount, the Petitioner with prior notice to Respondent Nos.2 to 4 will be entitled to take possession of the car. Respondent Nos.2 to 4 are in arrears of the loan amount, hence, Arbitration Award came to be passed against them. The Receiver has been appointed by the arbitrator to take custody of the car and the said Award noted that on taking possession of the car, a report thereof shall be filed before the arbitrator and that the

vehicle shall not be alienated until further orders of the Tribunal. Learned counsel for Respondent Nos.2 and 4 submitted that, the sale proceeds of the car may be appropriated towards the balance loan amount. He submits that if the sale proceeds are higher than the outstanding amount, the excess part of the sale proceeds be directed to be paid to Respondent Nos. 2 to 4, as per their entitlement.

15) The car is costly. Since its seizure, the car is lying in custody of the police and is open to the sky and adverse climatic conditions. The car is not properly taken care. As such, every passing day the car is ruining its road worthiness. If the Petition is not allowed with certain conditions, the depreciation value of the car would be more and it may fetch very less value. In view of above discussion, the impugned Judgment and Orders are not sustainable in law and liable to be quashed and set aside. As a result, the Petition deserves to be allowed. Hence, the following Order :-

ORDER

(i) Petition is allowed.

(ii) The impugned Judgment and Order dated 1st November, 2023 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.1014 of 2022 and the Order dated 19th October, 2022 passed by learned

Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai in Misc. Application No.1472/2022 in C.C.No.120/PW/2022, are quashed and set aside.

(iii) Respondent No.1 is directed to release the car i.e., Mercedes Benz CLA 200D bearing registration No.MH-02-FE-5432, Chassis No.WDD1173086L012056 and Engine No.65193034929805, in the custody of the Petitioner on its executing a *Supurtnama* bond in the sum of Rs. 20,00,000/-, on the following conditions :-

(a) Before release of the car, Respondent No.1 shall record a detailed panchnama of the actual condition of the car and take photos of the car from all the angles to preserve its identity for proof during the course of trial.

(b) The said panchnama and the photos shall be placed on the record of C.C.No.120/PW/2022, as evidence, for the sake of trial.

(c) Thereafter, Petitioner is permitted to sale the car subject to condition that, immediately after taking custody of the car, the Petitioner shall intimate the said fact to the Arbitrator within seven day from the date of taking the custody and thereafter take all steps to sale the car strictly in accordance with the Arbitration proceedings/Award and the terms and conditions in the Loan Agreement.

(d) The Petitioner shall complete the sale proceedings at the earliest and in any case within one month from the date of this Order and report its compliance to this Court.

(e) The sale proceeds of the car shall be adjusted against the arrears of the loan amount.

(f) The Petitioner shall give the Respondent Nos.2 to 4 the necessary details of the sale proceeds along with its adjustments with the loan account.

(g) On completion of the sale process as above, the *Supurtnama* bond shall stand cancelled.

(h) List the matter for recording compliance on **21st November, 2024.**

16. Petition stands disposed of.

[SHYAM C. CHANDAK, J.]