IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.92 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. Sushil Damu Sakhare
R/o. Flat No.502, Savitri Sankul,
CHS, Pakhudi Road, Kalwa Dist Thane, 400605.
ALSO AT
1st Floor, Sai Suman Apartment,
Old Parsik Tunnel, Uday Nagar,
Mumbra- Thane-400612. ...Respondents

Mr. Mahesh Deshmukh a/w Ms. Bijal Gogri i/by GNP Legal for the Petitioner.
Dr. D. S. Krishn Iiyer APP for the State.
Mr. Jayadip Jadhav, API, DCB,CID Unit-5, Kurla, present.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 3rd OCTOBER, 2024

PRONOUNCED ON : 16th OCTOBER, 2024

JUDGMENT :

. Present Petition seeks 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.1013 of 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 bearing No.482/2022, in C.C.No.258/PW/2021.

1.1) Additionally, Petition is seeking to allow the said Misc. Application filed by the Petitioner claiming custody of a vehicle i.e., Mercedes Benz GLA 200 CDI Sports bearing registration No.MH-04-JM-9309, Chassis No. WDC1569086L009822 and Engine No.65193034706098 with permission to sale the said vehicle ('*the car*', for short).

2) Mr. Amol Mali, Assistant Police Inspector, DCB, CID, Unit-V, Kurla has filed an affidavit thereby he conveyed that, he has no objection to release the car in the interim custody of Petitioner.

3) Despite notice Respondent No.2 did not appear and file his appearance. The car is costly; that it was purchased out of the loan amount, which is a public money; that pursuant to the arbitral

proceedings the car is subject matter of the recovery of the loan; and that 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. Hence, and considering the say of the Respondent No.2 filed before the Sessions Court, the Petition was taken up for hearing in the interest of justice. None appeared for Respondent No.2.

4) Heard Mr. Deshmukh, learned counsel for Petitioner and Ms. Krishna Iyer the learned A.P.P. along with Mr. Amol Mali, Assistant Police Inspector, DCB, CID, Unit-V, for the Respondent No.1-State. Perused the record.

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

6) Learned A.P.P. stated that, in view of the affidavit in reply filed by the Respondent No.1-DCB-CID and considering the facts and circumstances of the case, necessary orders may be passed, in the interest of justice.

7) The facts giving rise to this Petition are that, Petitioner is a Non-Banking Finance Company (formerly known as M/s. Daimler Financial Services India Pvt. Ltd.). That, by a 'Loan Agreement' dated 19th October 2018, Respondent No.2 availed a finance facility for a

sum of Rs.31,72,000/- to purchase the said car. Said loan was refundable subject to certain terms and conditions stated in the loan Agreement. At the same time, a Deed of Hypothecation dated 19th October, 2018 was also executed thereby said car was Hypothecated in favour of the Petitioner as a security for the total amount repayable under the Loan Agreement. As per contractual terms and conditions in the loan Agreement and Moratorium, Respondent No.2 was bound to pay to the Petitioner a total sum of Rs.30,59,680.55 due as on 27th August, 2020 together with interest at 18% per annum till the date of realisation/payment thereof. The Respondent No.2, however, failed to pay the due amount as per loan Agreement. Therefore, as per clause 66 of the Loan Agreement, the Petitioner initiated the arbitration proceedings therein the sole arbitrator observed that the Respondent No.2 defaulted in payment of his loan EMIs and, therefore, the Loan Agreement was terminated on 10th December, 2019 and entire amount was called upon to be paid. In due course the Arbitral Award dated 25th January, 2021 came to be passed.

7.1) That, an F.I.R. bearing C.R. No.11 of 2021 dated 13th January, 2021 was registered with Kurla Police Station against Dharmavir Sharma @ Vajimuddin Shaikh @ Bhaskar Gouda @

Dharm and eight others, under Sections 420, 419, 467, 468, 471, 485 read with 34 of I.P.C. Thereafter, said crime was transferred to Kurla Crima Branch, Mumbai (CRB CID Unit-V) for further investigation, where it was re-registered as, C.R. No.22 of 2021. On completion of investigation charge-sheet came to be filed before the Court concerned and it has been registered as C.C.No.258/PW/2021. It is alleged that the accused-Pradeep Maurya in the said crime forged document in the name of Respondent No.2 and availed said financial facility to purchase the said car and mortgaged that car with one Amar Umesh Singh for a sum of Rs.10,00,000/-. Said Amar Umesh Singh further mortgaged the car to Dr. Mukul Singh, for a sum of Rs.10,00,000/-. During investigation of the said crime, Respondent No.1-Police seized the said car.

8) In the backdrop, the Petitioner filed the Misc. Application No.482/2022 under Section 451 of Cr.P.C. seeking for custody of the car and permission to sale the same. This Application was pressed on the grounds that, since Respondent No.2 has failed to repay the loan amount, the Petitioner is entitle for the custody of the said car. That, the car was Hypothecated with the Petitioner. That, the Respondent No.2 failed to comply with the Arbitration Award dated 25th January,

2021, therefore, the Petitioner is entitled to seize and take possession of the said car under the said Award.

9) The Respondent No.1 filed say to the Application and stated that the police has no objection to release the car in custody of the Petitioner. However, learned A.P.P. before the trial Court objected the Application. Respondent No.2 also objected the Application on several grounds.

10) After considering matter, the learned Magistrate held that, Petitioner has filed an arbitration proceedings against Respondent No.2, seeking for recovery of the loan amount and possession of the car. An Arbitral Award has been passed, accordingly. Hence, it would not be proper to release the car in custody of the Petitioner. The Petitioner assailed the said Order in Criminal Revision Application No.1013 of 2022, relying on following decisions :

(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]

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

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

11) Respondent No.1-State filed its reply and objected to handover the custody of the car to the Petitioner.

12) The Respondent No.2 appeared in the Revision and filed his reply as same in the trial Court. In the reply he contended that the Engine and Chassis Nos. of the car stated in the loan Agreement as well as the Misc. Application are totally different from the Engine and Chassis Nos. of the car stated in the Panchnama. The Application is devoid of the details as to the loan installments paid and the loan payable by Respondent No.2. That, the Respondent No.2 could not pay the loan due to his poor financial condition. Yet, the Respondent No.2 has stated that, if the car sale proceeds exceeds the outstanding loan amount on the particular day, then the excess amount shall be transferred to his bank account.

13) After considering the matter in the light of the rival submissions, the learned Additional Sessions Judge, dismissed the Revision by the impugned Judgment and Order dated 1st November, 2023. In this regard, the learned Sessions Judge observed that, “the

4 Cri. Application No.1307 of 2018 dt. 17/07/2019

Respondent No.2, who is registered owner of the car, has not taken steps to obtain the custody of the car. As per the Arbitral Award, in the event the Respondent fails to make the due payment or surrender the car and, claimant is unable to seize and take possession of the car and sale the same, the claimant shall execute the Award to recover the amount from the Respondent. It is not brought on record as to whether execution of the Award is proceeded. The Petitioner has recourse to execute the Award. It appears that instead of executing the Award the Petitioner has approached the learned Magistrate for custody of the car to sale it. As on today the care stands in the name of Respondent No.2. Under the Award Respondent No.2 was expected to handover the custody of car to the Petitioner. First claim on the car will be of the registered owner. The Petitioner has other recourse open to recover the due amount in respect of the Loan Agreement. The Petitioner wants to recover the loan amount by sale of the car. The Petitioner can not directly execute the Award through this Court. Hence, rejection of the Petitioner's application, by the ld. Addl. Chief Metropolitan Magistrate is correct.

14) In the aforesaid background, I have carefully considered the Petition and the documents produced on record in support of the

Petition. The loan Agreement is produced on record, 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."*

15) 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 No.2 will be entitled to take possession of the car. This right or authority is also available to the Petitioner under the Arbitration Award, as the Respondent No.2 failed to comply the Award. The say filed by Respondent No.2 before the Courts below indicates that Respondent No.2 has accepted the arrears.

16) In the affidavit, Amol Mali, Assistant Police Inspector, DCB, CID, Unit-V, has clarified that the seized car and the pursuant panchnama has the same Engine Number and Chassis Number as in the Registration Certificate, based on which the investigation officer had given his no objection in the Courts below for release of the car. It is stated that, the Petitioner is the only finance company for the car and it has no role to play in the crime. It is stated that, Respondent No.2 had availed the loan facility from the Petitioner under the said Agreement dated 19th October 2018, for the purchase of the car stated in the Registration Certificate. Hence, the custody of the car can be given to the Petitioner, as prayed for in clause (c) of the Petition.

17) Since its seizure, the car is lying in the custody of police. It is open to the sky and adverse climatic conditions. The car is not

properly taken care of. As such, every passing day the car is ruining its road worthiness. The car is costly and it is purchased from loan amount, which was public money. If the Petition is not allowed with certain conditions, the depreciation of the car would be more and, at the end of the trial it may fetch very less value, perhaps minimal. 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 with suitable conditions. Hence, following Order is passed :-

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.1013 of 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 bearing No.482/2022, in C.C.No.258/PW/2021, are quashed and set aside.

(iii) Respondent No.1 is directed to release the car i.e., Mercedes Benz GLA 200 CDI Sports bearing registration No.MH-04-JM-9309, Chassis No. WDC1569086L009822 and Engine No.65193034706098 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.258/PW/2021, 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 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 No.2 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.**

18. Petition stands disposed of.

[SHYAM C. CHANDAK, J.]