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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 127/2023**

AXIS BANK LIMITED

..... Appellant

Through: Mr. Anurag Sharma, Advocate.

versus

HARJINDER SINGH DAHIYA

..... Respondent

Through: Mr. Ravi Kumar, Advocate with

respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

20.03.2024

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CM APPL. 17391/2024 (early hearing)

1. The respondent moved this application seeking early hearing of the above captioned appeal scheduled for hearing on 29.07.2024.
2. For the reasons stated in the application, the same is allowed.
3. The next hearing scheduled for 29.07.2024 is cancelled.
4. The application stands disposed of.

FAO (COMM) 127/2023 & CM APPL. 17392/2024 (vacation of stay)

5. The appellant has filed the present appeal under Section 37(1) (b) of the Arbitration and Conciliation Act, 1996 (hereafter *A&C Act*) impugning an order dated 01.05.2023 (hereafter *impugned order*) passed by the learned Commercial Court in OMP (I) (COMM) No.1797/2022 captioned *Axis Bank Limited v. Harjinder Singh Dahiya*.
6. The appellant had filed the said application under Section 9 of the A&C Act. It is the appellant's case that it had extended financial assistance to Shri Harjinder Singh Dahiya (since deceased) for purchasing a Kubota Tractor bearing Chassis No. KBTM20TNHMTA52188, Engine No.



BMA4454 and registration no. HR-79C-1046 (hereafter *the Tractor*). The said borrower had defaulted in its repayment obligation and thus, the appellant sought to take possession of the Tractor. The appellant apprehended that the borrower would sell the Tractor and thus, defeat the rights of appellant to enforce its security. In the given circumstances, the appellant filed the aforementioned application under Section 9 of the A&C Act.

7. The learned Commercial Court passed an *ex parte* order dated 05.07.2022, whereby the appellant was allowed to take over the possession of the Tractor, however, the same was subject to certain conditions including that the order would remain in force for a period of 90 days from the date of the said order or to the date when the arbitral proceedings commence, whichever is earlier. The appellant took over possession of the Tractor on the strength of the order dated 05.07.2022 passed by the learned Commercial Court.

8. The respondent filed an application for vacation of the said interim order, which was allowed in terms of the impugned order. The learned Commercial Court held that conditions subject to which the order dated 05.07.2022 was passed, were not satisfied. The learned Commercial Court also held that the Tractor was seized illegally. Accordingly, the learned Commercial Court directed return of the Tractor and also imposed cost of ₹1,00,000/-. The appellant has filed the present appeal being aggrieved with the said order.

9. It is the case of the appellant that the arbitral proceedings had commenced earlier pursuant to a notice dated 04.06.2022 whereby the



appellant had unilaterally appointed an arbitrator. It is also claimed that the learned Arbitrator had passed an order dated 14.09.2022 under Section 17 of the A&C Act.

10. The learned counsel for the respondent submitted that the unilateral appointment of the learned Arbitrator without concurrence of the respondent is *non-est*. There is also serious doubt whether the notice dated 04.06.2022 allegedly invoking arbitration was received by the respondent. The respondent claims that postal receipts indicate that the said notice was sent at an incorrect address and, in fact, the respondent had not received the same.

11. The learned counsel for the appellant states that, without prejudice to the rights and contentions to commence arbitral proceedings afresh, the appellant would return the Tractor to the respondent. He, however, requests that the cost, as imposed by the learned Commercial Court, be waived.

12. The learned counsel for the respondent is agreeable to the said suggestion, on instructions of the respondent, who is present in Court.

13. In view of above, the present appeal is disposed of while setting aside the impugned order passed by the learned Commercial Court. The appellant is bound down to the statement that it shall return the Tractor to the respondent in proper running condition within a week from date, after verifying the credentials of the respondent.

14. This order is passed by consent of the parties.

15. It is clarified that the present order is without prejudice to the rights



and conditions of the parties. This order will also not preclude the appellant from seeking such interim measures of protection, as advised, from the arbitral tribunal, as and when constituted.

16. The pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 20, 2024

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Click here to check corrigendum, if any