**25.** **11.03.2025**
**Court No.16.**

(Pritam)

**FMAT 26 of 2025**
**with**
**CAN 1 of 2025**

**Cholamandalam Investment & Finance Company Limited**

**-Vs.-**

**Ashutosh Singh.**

Mr. Ritoban Sarkar,
Ms. Shrayashree Das,
Mr. Rohan Kumar Thakur,
Mr. Tridibesh Das Gupta

……for the appellant.

1. The present appeal has been preferred against an order passed on an application under Section 151 of the Code of Civil Procedure but substantially for mandatory injunction within the contemplation of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.
2. The brief facts of the case are that the plaintiff/respondent obtained an order of *ex-parte* ad interim order of injunction in connection with the suit filed in respect of a vehicle, which was taken on hire purchase by the respondent from the present appellant, the lender. By the order of ad interim injunction, the learned trial judge has restrained the defendant/appellant and its men and agencies from

taking possession of the vehicle without due process of law till the next date fixed, subject to payment of regular EMIs.

3. Learned advocate for the appellant submits that in view of the failure of the plaintiff/respondent to pay EMIs, by following the governing guidelines of the Reserve Bank of India, the appellant took possession of the vehicle from the respondent.

4. However, by the impugned order, the learned trial Judge, without adverting to such aspect of the matter, granted a blanket direction on the appellant to restore the possession of the said vehicle within seven days to the respondent.

5. Upon hearing learned advocate for the appellant and on a careful appraisal of the ad interim order of injunction dated December 5, 2024, passed in connection with the suit from which the present appeal arises, we find that by such *ex parte* ad interim order, not only was the appellant restrained from taking possession of the vehicle, there were also other components to the said order.

6. First, the same was subject to payment of regular EMIs and we do not find anything on record to indicate that the appellant placed sufficient documents to satisfy the learned trial Judge as to the non-payment of EMIs after the order of December 5, 2024.

7. The second component was that the possession, if any (even if the EMIs were not paid), shall be in due process of law.
8. In the impugned order, the learned trial Judge recorded dissatisfaction on the issue of such injunction order having been violated.
9. As such, we do not find any reason to interfere with such legitimate exercise of judicial discretion the learned trial Judge by substituting our own views in the matter for that of the learned trial Judge.
10. Since the taking over of possession of the vehicle was in violation of the *ex-parte* ad interim injunction order, the learned trial Judge was justified in directing restoration of possession of the vehicle to the respondent.
11. Hence, there is no scope of interference with the impugned order.
12. Accordingly, FMAT 26 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequently, the connected application bearing CAN 1 of 2025 also stands dismissed.
13. There will be no order as to costs.
14. However, in view of the pendency of an application under Section 5 and 8 of the Arbitration and Conciliation Act, 1996 before the trial court at the behest of the defendant/appellant, such application shall be decided first by the learned trial Judge before

proceeding further with the hearing of the suit or taking up other connected interlocutory applications. It is expected that such application under Sections 5 and 8 shall be disposed of by the learned trial Judge as expeditiously as possible, preferably within four weeks from the date of communication of this order to the learned trial Judge.

15. We further clarify that the above observations are tentative, arrived at only for the purpose of deciding the issue at hand, and shall not be conclusive or binding on the learned trial Judge at any further stage of the injunction application or the suit and/or any connected interlocutory applications.

**(Sabyasachi Bhattacharyya, J.)**

**(Uday Kumar, J.)**