

OC -101

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/845/2024
M/S CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY
LIMITED
VS
SAIF AHMED AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th August, 2025.

Appearance:

Mr. Ritoban Sarkar, Adv.

Ms. Shrayashee Das, Adv.

Mr. Rohan Kumar Thakur, Adv.

Mr. Tridibesh Dasgupta, Adv.

.... for the petitioner

The Court :-None appears for the respondent. This is an application for interim protection and appointment of a Receiver over the hypothecated asset. Today, a prayer is made for appointment of a Receiver. The asset is described herein below :-

“4923 SPECIALLY BUILT bearing Registration No. BR-09-GA-8456, Engine No. 81K84831098 and Chassis No. MAT704128JAK24231.”

The petitioner contends that respondent Nos. 1 and 2 being desirous of purchasing the aforementioned vehicle, approached the petitioner. A loan-cum-hypothecation agreement was entered into on September 7, 2022 at the office of the petitioner at premises No. Chowringhee Court 55/55/1,

Chowringhee Road, 5th Floor, Calcutta 700071. The loan amount was approximately Rs.23,90,465/- lakhs. The sum was to be paid back in 47 monthly instalments.

The allegation is that, only the first instalment was paid and thereafter the respondents failed and neglected to pay the remaining instalments as per the repayment schedule. By a Notice dated August 31, 2024, the petitioner terminated the loan-cum-hypothecation agreement and made a demand. According to the agreement, the petitioner can also repossess the vehicle if defaults are committed by the respondents. The loan agreement contains an arbitration clause. My predecessor Judge held that this Court had jurisdiction to decide the matter, in view of the seat of arbitration being mentioned as Kolkata in the Schedule.

Upon considering the, prima facie, case of the petitioner and upon rejecting the preliminary objection raised by the respondents, an injunction was passed on September 25, 2024, restraining the respondents from selling, transferring, alienating or encumbering the asset which has been described hereinbefore. Further direction was passed upon the respondents to preserve the vehicle in good condition. The respondents were also directed to disclose the location and status of the asset in their affidavit in opposition. According to the petitioner, on the date of filing of the application, that is on August 31, 2024, the dues were to the tune of Rs. 25,38,604/-. An affidavit-in-opposition was filed by the respondents, inter alia, alleging that the respondents were not

in a position to use the vehicle and as such could not earn from the same. It has been stated that the vehicle is lying unutilized for a long period. Moreover, it is contended that the petitioner did not cooperate with the respondents and as such the registration of the vehicle was not complete. The photographs of the vehicle, which is lying in a reasonably good condition at Vijayvada, Transport Area Road, Pakirgudem have been annexed.

This Court is of the view that a receiver need not be appointed over the said vehicle. The respondents will not be in a position to utilize the same and use it for the purpose behind such purchase. The location of the vehicle has been disclosed. However, the injunction which has been passed by my predecessor Judge shall continue for a period of three months. Apart from the usual course of business, the vehicle shall not be used for any other purpose. The same shall not be alienated or transferred and the condition of the vehicle shall be preserved. Any further relief that is available to the petitioner shall be prayed for before the learned arbitrator.

The petitioner has not made out a case that the asset is either being removed from its location or there is an attempt to diminish the value thereof. Thus, a receiver need not be appointed. Moreover, the order of injunction was passed in September 25, 2024 and the notice invoking arbitration was issued on July 2025, i.e., after ten months from the first order of injunction.

The petitioner has submitted that the notice invoking arbitration has already been issued on July 8, 2025. The respondents have also replied to the

same on August 8, 2025. Under such circumstances, the prayer for appointment of the receiver over the asset, is rejected.

Although the affidavit-in-opposition used by the respondents is not on record, a copy of the same has been handed over to Court by the petitioner and the Court relies on the same and treats the same to be the original. The prayer for appointment of a receiver shall be made before the learned arbitrator. Needless to mention, the vehicle shall not be shifted out of Vijayvada.

The application is disposed of.

(SHAMPA SARKAR, J.)