OCD 39

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP-COM/1063/2024
BASANT OIL CARRIERS
VS
KOTAK MIHINDRA BANK LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : January 6, 2025

Mr. Amitava Mukherjee, Adv.
Ms. Arpita Saha, Adv.
Ms. Antara Das, Adv.
Mr. Rajesh Jana, Adv. ...for petitioner.
Mr. Avishek Guha, Adv.
Mr. A. Majumder, Adv. ...for respondent.

The Court : Affidavit of service filed in court today is taken on record.

The petitioner is the borrower, whose vehicle had been re-possessed by the bank on the ground of default in payment of the monthly instalments. The petitioner's contention is that, subsequently the amounts have been paid towards the principal and interest and the loan account has been regularised. Thus, a prayer is being made for return of the vehicle to enable the petitioner to ply the same. Such interim measure is sought under section 9 of the Arbitration and Conciliation Act, 1996.

Mr. Guha, learned advocate for the respondent/bank, submits that after re-possession, the petitioner paid some instalments. The loan was terminated on account of default. However, the bank had already accepted the subsequent payments from the petitioner. As of now, an amount of over Rs.13,47,678/- is still due and payable. According to Mr. Guha, approximately Rs.80,000/- is the current overdue.

Mr. Mukherjee disputes the calculation and submits that the bank cannot claim the amount as submitted by Mr. Guha in view of the subsequent payments made by the petitioner which were accepted by the bank.

In my opinion, the disputes with regard to the amount payable, the overdue amount, the consequence of the termination and the consequence of acceptance of the amount tendered by the petitioner are issues which are to be decided in arbitration. The parties admit that the loan agreement provides for settlement of disputes by way of arbitration.

Under such circumstances, this application is disposed of on the, prima facie, satisfaction of the court that the petitioner had made payments after re-possession of the vehicle, which shows its bona fide. The petitioner also agrees to continue to pay the dues upon receipt of proper calculation. However, the quantum which is in dispute shall be settled in another proceedings by the appropriate forum. Upon payment of the overdue amount of Rs.80,000/- by the petitioner, the vehicle shall be returned to the petitioner by the bank. The payment and acceptance of Rs.80,000/- by the bank shall also be without prejudice to the claims and contentions of the parties.

The petitioner shall not alienate the vehicle nor encumber the same in any way. The bank shall be at liberty to take periodical inspection of the vehicle. The petitioner shall be entitled to continue using the vehicle upon receipt of the same in terms of this order, for a period of three months. The petitioner must take steps in accordance with law for adjudication of the disputes between the parties.

The bank shall provide a calculation to the petitioner with regard to the dues payable [both principal and interest] within two weeks from date. The vehicle will be returned to the petitioner within 48 hours from the petitioner furnishing Rs.80,000/- to the bank without prejudice to all his rights and contentions.

It is made clear that the parking charges payable from the date of re-possession of the vehicle by the bank shall be the liability of the bank.

AP-COM/1063/2024 is disposed of accordingly.

(SHAMPA SARKAR, J.)

pkd/GH