OCD 10

ORDER SHEET
AP-COM/1093/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

KULWINDER SINGH
VS
INDUSIND BANK LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 13th March, 2025.

Appearance:
Ms. Srijani Mukherjee, Adv.
Mr. Satrajeet Sen, Adv.
Mr. Lalratan Mandal, Adv.
…for the petitioner

Ms. Soni Ojha, Adv.
…for the respondent

The Court:

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 for appointment of a Receiver/Special Officer, to take possession of the vehicle bearing No.OD11AC 5353 with the help of the police and for further mandatory order of injunction directing the respondent to hand over the possession of the vehicle with all original papers and documents.
2. The matter was taken up on January 8, 2025, when the submission was made by the respondent that this application should be rejected on the ground of suppression of the fact that a civil suit, on the selfsame

cause of action, had been filed by the petitioner and an injunction had been granted against the bank. The petitioner was granted liberty to take instructions in this regard. The bank was directed to file an affidavit, with regard to the allegation of the petitioner.

3. On January 28, 2025, the bank filed an affidavit-in-opposition before the Court. The petitioner submitted that the suit was filed on wrong advice and the petitioner intended to withdraw the same.

4. The suit has been withdrawn. The petitioner further submits that an opportunity be given to pay the dues, to be calculated by the respondent and the vehicle may be released in his favour, upon such payment. This Court permitted the bank to supply a calculation in this regard.

5. Today, it is submitted by the learned advocate for the petitioner that the calculation is erroneous and the respondent has included future dues over and above the dues which were payable at the time of repossession of the vehicle on October 18, 2024. The approach of the petitioner appears to be bona fide, inasmuch as, the petitioner has already withdrawn the suit and makes a prayer before this Court for delivery of the vehicle, upon payment of a reasonable amount. It is further prayed that the Court may ask the respondent to restructure the loan and the petitioner undertakes to make regular payments.

6. It is not in doubt that there is a loan agreement which contains an arbitration clause. This application is disposed of directing the petitioner to pay a sum of Rs.6 lakhs to the bank, within a period of three weeks from date. Such payment and acceptance shall be without

prejudice to the rights and contentions of the parties with regard to the claim of the bank. On receipt of the said amount, the bank will return the vehicle in good condition. The petitioner would be entitled to ply the vehicle. Thereafter, the parties may sit together and restructure the loan, in the event the petitioner complies with this order. Failing such restructuring/proposal, the bank will be entitled to proceed for arbitration.

7. This order is only an interim relief which is granted by balancing the equities and the rights and liabilities of the parties. Unless the petitioner can use the vehicle, he will suffer irreparable loss. This order shall not be construed as any observations on the merits of the claim of the bank. The bank shall always be at liberty to proceed in accordance with law and either restructure the loan or raise the dispute by invoking the arbitration clause.
8. AP-COM/1093/2024 is, accordingly, disposed of.
9. All parties to act on the learned advocate's communication.

(SHAMPA SARKAR, J.)

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