

**IN THE COURT OF SH.BALWINDER KUMAR,
ADDITIONAL DISTRICT JUDGE, LUDHIANA
(UID Number PB0160)**

Case Type	ARB
CNR number	PBLD01-028178-2018
Date of Decision	13.12.2018

Hinduja Leyland Finance Limited having its registered office at No.1, Sardar Patel Road, Guindy, Chennai and having its branch office at Plot no.202, Sai Kirpa Tower, Industrial Area-A, Cheema Chowk, Ludhiana, through its authorised signatory Shri Raman Sharma.

....Petitioner

versus

Mr Shiv Kumar son of Shri Baldev Kumar resident of House no.3552, Street no.10, New Madhopuri, Ludhiana 141007

... Respondent.

Petition under Section 9 of Arbitration and Conciliation Act.

Present: Shri Vijay Kumar Kalsi, Advocate, counsel for the petitioner.

ORDER:

Received by entrustment. It be registered. The petitioner has filed the present petition under Section 9 of the Arbitration and Reconciliation Act, 1996 read with Section 151 CPC, with a request to appoint exparte receiver to take the possession of vehicle make AL DOST bearing engine no.JHH045058P and chasis no.90638 and for permission to sale the vehicle in the absence of respondent to settle the claim of the petitioner.

2. It is mentioned in the petition that the respondent approached the petitioner for a loan of Rs.5,15,793/- for purchase of vehicle and also executed a loan agreement dated 30.3.2018, which was to be paid back by the respondent to the petitioner in 53 equal monthly installments of Rs.13227/- each but after taking the said loan, the intention of respondent

became malafide and in order to misappropriate the loan amount, the respondent stopped making the payment of monthly installments and thus an amount of Rs.5,30,134/- is outstanding towards the above said loan amount. It is further averred that despite regular and consistent follow-ups by the officials of the petitioner, the respondent failed to make the payment of his EMIs and then petitioner also got served notice to the respondent calling upon the respondent to make the payment but of no use. It is further averred that the agreement entered into between both the parties bears Arbitration Clause. Hence, the instant petition seeking the appointment of receiver to take the possession of vehicle in question.

4. Learned counsel for the petitioner while arguing in the lines of the present petition contended that the petition may be allowed.

5. Keeping in view of the submission of learned counsel for the petitioner, this Court is satisfied that there is sufficient ground for passing an order for providing an interim relief. In case such relief is not granted, the apprehension of creation of third party interest exists, thereby unnecessarily complicating the matter. Accordingly, concerned **D.S.P (Traffic) Ludhiana**, is appointed as Receiver to take possession of vehicle in question from the respondent and retain the possession and control of the vehicle till further orders as per the following directions:-

i) The Receiver shall first give an opportunity of making of payment due to the respondent. In case of payment of due installments by the respondent upto date of possession of the vehicle, the petitioner shall issue the receipts of said payment and shall not enforce the order of taking the possession of the vehicle.

ii) Before taking into possession the vehicle, respondent shall be allowed to remove his belongings, valuables, invaluable, from the vehicle and even the accessories attached by him to the vehicle so that he can restore the vehicle in the same condition in which it was purchased.

iii) Any article, valuable or invaluable in the vehicle that is not the part of the agreement in question shall be returned to the respondent and the vehicle shall be taken into possession in that condition which was purchased without any accessory that had been added by the respondent after purchase. The copy of seizure memo and list of inventory shall be supplied to the respondent on the spot itself. It is further directed that the receiver at the time of seizure of the vehicle, shall not use any force in the process and shall issue appropriate receipt to the respondent regarding the custody of the vehicle taken specifically mentioning the date, time and place of such seizure and shall obtain the signatures of the respondent.

iv) The receiver shall take the photographs of the vehicle from all angles to ascertain the condition of the vehicle as it was at the time of seizure and will also note down the condition of the vehicle in writing by describing it with specification required.

v) The receiver shall also note down the reading of mileage from the odometer and shall record the same and thereafter shall get the vehicle inspected at the authorized workshop in the nearby locality with respect to the actual mechanical condition of the vehicle and shall obtain the report to be placed before the court, as and when asked and prepare the list of full inventory of the accessories, if any, removed by the respondent and supply copy of the same to the respondent.

vi) The receiver shall not use the vehicle for his own purpose in any manner of whatsoever nature or even for the purpose of the petitioner company. The Receiver shall also ensure that the vehicle is kept in the same condition as in his safe custody.

vii) This order of mine will be operative and valid upto thirty days from the date of order and in case appropriate proceedings for appointment of Arbitrator are not taken out or the arbitrator is not appointed, this order will have no force from that date and vehicle will be returned to the respondent.

Let notice of petition be issued to the respondent for 30.1.2019 to show cause as to why the instant order may not be confirmed.

Pronounced:13.12.2018

**Balwinder Kumar,
Additional District Judge,
Ludhiana.
(UID Number PB0160)**

Sudesh Kumari, Steg.G-I