

Present: Sh. Vipul Dharmani, Adv, counsel for the petitioner.

Heard. The petitioner has filed a petition under Section 9 of the Arbitration and Reconciliation Act, 1996 seeking an interim relief for appointment of a receiver to re-possess five vehicles, so that the respondent shall not be in a position to alienate, sell, transfer or dispose of the five vehicles of make bearing registration no. PB-10-FF-4447, Engine No. 400950D0020792, Chassis No. MEC2241CGFP020544, Registration No. PB-10-FF-4407, Engine No. 400950D00200778, Chassis No. MEC2241CGFP020529, Registration No. PB-10-FF-4457, Engine No. 400950D0020779, Chassis No. MEC2241CGFP020531, Registration No. PB-10-FF-4427, Engine No. 400950D0020802, Chassis No. MEC2241CGFP020556 and Registration No. PB-10-FF-4437, Engine No. 400950D0020821, Chassis No. MEC2241CGFP020573.

2. It is averred that the petitioner company had advanced a loan for the sum of Rs. 28,66,400/- for each vehicle totaling to Rs. 1,43,32,000/- to the respondent for purchase of vehicles in question, in respect of which agreement was executed and it was agreed that the respondent would repay the loan of total sum of Rs. 1,42,88,386.53/- along-with interest @ 12.75% p.a payable in terms of **60** monthly instalments. Earlier, the petitioner filed the petition under section 9 of Arbitration and Conciliation Act where in receiver was appointed vide order dated 29.11.16. The respondents approached the petitioner and requested to restructure the loan facility. The request of the respondents was acceded to. A supplementary agreement dated 25.12.16 was duly executed between the parties. Even the petitioner withdrew the said petition under section 9 vide order dated 24.1.17 with liberty. However, the respondents miserably failed in timely repayment of monthly instalments. Despite repeated reminders and representations, the respondents have not paid the amount due and also failed to make the vehicle available for inspection to the Officers of the petitioner company. Hence, the instant petition seeking the appointment of receiver to re-possess the vehicle.

3. It is prayed that the respondents are trying to dispose of the said vehicle. It is therefore, prayed that a receiver may be appointed to repossess the vehicle in question to keep the vehicle in safe custody till the initiation of the

Arbitration proceedings and during the pendency of the arbitration proceedings.

4. In view of the submission and in view of the spirit of Section 9 of the Arbitration and Conciliation Act, 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, A.C.P (Traffic) Ludhiana is appointed as receiver to take possession/ seize the vehicle in question from the respondents whose remuneration to the tune of Rs.3000/- shall be paid by the petitioner 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 respondents. 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 its belongings, valuables, invaluable from the vehicle and even the accessories attached by them to the vehicle so that they 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 the 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 the 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.

(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 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 the notice through registered cover also be issued to the respondents for 10.01.2018 to show cause as to why the instant order may not be confirmed.

Sonia Kinra/ADJ/LDH.

UID No. PB 0176

Dt.08.12.2017

kavita Stenographer-III
Next date 10.01.2018

Purpose: