IN THE COURT OF SHRI DEEPAK JAGOTRA,
PRINCIPAL DISTRICT & SESSIONS JUDGE, EAST DISTRICT,
KARKARDOOMA COURTS, DELHI

ARBT No.1797/22

In the matter of;

Dash Leasing & Finance Pvt. Ltd. Versus Karamat Khan

Arguments heard on:07-10-2022
Order announced on:07-10-2022

ORDER

1. This is an application filed by the petitioner seeking interim relief for ex-parte appointment of a Receiver to take possession of loaned vehicle.

2. I have heard learned counsel for the petitioner and carefully perused the record.

3. Learned counsel for petitioner submits that a Receiver may be appointed ex parte as there is every likelihood that respondent may dispose of/ sell/ transfer the vehicle in question or may create any third party interest in the vehicle in question. Learned counsel for petitioner further submits that if ex parte order is not passed, it would seriously hamper the case of the petitioner and the purpose of filing the present petition would be frustrated. Learned counsel for petitioner prays that a Receiver may be appointed to repossess the vehicle in question.

4. Brief facts relevant for the disposal of present application may now be indicated.

5. The respondent had applied for a loan for the purposes of

purchasing vehicle i.e. **3 Wheeler Auto Rickshaw, bearing Registration No.DL-1R-M-2172, Engine No.AFZWCG94785 and Chasis No.MD2A44AZ3CWG16187.** Pursuant to the loan request, the respondent was granted a loan of **Rs.2,10,000/-** agreement of which is reduced into writing by way of Loan Agreement/sanction dated **05.02.2020**. It was agreed upon by the respondent that the loan amount shall be repaid in **36 EMIs of Rs.7933/-** each. It is further transpired that respondent has paid **15** installments out of the fixed installments. It is further found out that the respondent had not paid the dues despite umpteen number of requests and demands by the petitioner and service of **Notice dt.12.09.2022** which was duly sent but the respondent did not pay any heed to the same.

6. Considering the fact that respondent had taken a loan for the purchase of aforementioned vehicle and executed the Loan Agreement and subsequently, he did not honour his commitment by making good the EMIs against discharge of said loan, the petitioner has got a good prima facie case in his favour. Since the respondent has paid few EMIs out of the total EMIs and has defaulted in making the subsequent EMIs, the balance of convenience lies in favour of the petitioner and against the respondent.

7. Considering the fact that petitioner had advanced a loan for the purchase of aforementioned vehicle and the amount is due towards discharge of loan against the respondent, the petitioner would suffer irreparable loss and injury if the interim relief is not granted. There is also likelihood that respondent may dispose of the vehicle in question. Therefore, prima facie, a case for appointment of a Receiver to take possession of the vehicle in question has been made out in the light of

given facts and circumstances of the matter especially considering the fact that loan amount has been given by the petitioner and it is the bounden duty of the respondent to have adhered to the EMIs as stipulated in the Loan Agreement which he completely fails to honour.

8. This Court is satisfied that the petitioner has made out a case for appointment of the receiver. So considering the fact and circumstances of the case, **Sh. Rahul,** an Officer/AR of the petitioner company, subject to filing of copy of his ID proof, is appointed as Receiver to take possession of the aforesaid vehicle on the terms and conditions as laid down by Hon'ble High Court vide its order passed in ***KOTAK MAHINDRA PRIME LTD VS KAMAL CHAUHAN & ANR, O.M.P (I) No. 540/2015 & I.A. No. 25026/2015 on 23-12-2015***, which are as under:-

> *"6. The receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.*
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> *7. The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.*
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> *8. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of*

the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

9. The receiver shall also ensure that the repossession of the vehicle does not result in any breach of peace. In the event of any breach of peace, the receiver shall not proceed without assistance of police.

10. At the time of taking the custody of the vehicle, the receiver shall deliver a copy of this order to the person from whom the possession it is taken.

11. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession.

12. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

13. After taking the vehicle in possession, the receiver shall keep the vehicle in safe custody.

14. If the respondent makes payment of the outstanding installments as on date of possession, the receiver shall release the vehicle in question to the respondent on superdari subject to an undertaking by the respondents to the receiver for regular repayment of future monthly installments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

15. If the respondent is not in a position to clear the entire outstanding installments, the receiver shall give him another opportunity to pay the outstanding installments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment the *outstanding installments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.*

16. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver, with the prior permission of the arbitrator, would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the arbitrator along with his final report. The receiver shall submit his report before this Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above."

9. Petitioner is directed to initiate arbitration proceedings against the respondent within 90 days from today, if not already initiated, in terms of Section 9 (2) of the Arbitration & Conciliation (Amendment) Act, 2015. In case of failure, the aforesaid order is deemed to be vacated. Interim application stands disposed of accordingly.

10. Receiver shall inform the respondent the option of resolving the dispute amicably by settlement in Mediation Centre, Karkardooma Courts, Delhi and shall also give a copy of this order to the respondent or to the person at the time of repossessing the vehicle.

11. The petitioner shall refer the dispute to Arbitration in terms of Arbitration **Clause 10.14** of Loan Agreement for appointment of an Arbitrator within two weeks from today and to inform the Court about the

same on the next date of hearing.

12. It is made clear that this order shall remain in force for a period of 90 days from the date of the order or the date when the Arbitration proceedings commenced, whichever is earlier. It is further directed that the copy of this order be served upon the respondent or upon the person from whom the possession of the vehicle is taken from, against receipt, failing which this order shall cease to have any effect and is liable to be set aside with cost.

13. Issue notice of the petition to the respondent on filing PF/RC/Speed Post for **16.01.2023**.

Announced in the open court
on 07th OCTOBER, 2022.

(DEEPAK JAGOTRA)
PRINCIPAL DISTRICT & SESSIONS JUDGE
EAST DISTRICT
KARKARDOOMA COURTS, DELHI