

COM.AA 464/2022 dt.11/10/2022

Heard learned counsel for the application on I.A.No.I to III. Perused records.

I.A.No.I is filed seeking dispensing of production of original documents. For the reasons stated in the affidavit production of original documents is dispensed with and IA.No.I is allowed.

Main application under Section 9 of the Arbitration & Conciliation Act is filed by the applicant praying to restrain the respondents from selling, alienating or transferring or disposing the equipment Caterpillar which is in possession of the respondents. The applicant has also prayed for appointment of receiver to take possession of the equipment with authorization to take necessary police aid and in the alternative to direct the respondents to provide adequate security to the applicant to an amount of Rs.30,23,200/-.

The applicant has filed I.A.No. II, praying appointment of Receiver by an ad-interim order. IA.No.III is filed praying to restrain the respondents from disposing, alienating, encumbering or dealing with the equipment Caterpillar 424V2 Backhoe Loader with Serial No.JTY00692.

The contention of the applicant is that the respondents have availed loan for purchase of Caterpillar mentioned in the schedule and have executed necessary documents, but are not praying installments as agreed. According to the applicant inspite of reminder, installment amount are not paid by the respondents. Applicant has stated that notice was also issued to respondents terminating the loan and

security agreement, but the respondents have not responded and have not made payment. The Loan and Security Agreement contains arbitration clause. Now the applicant intend to invoke arbitration as provided in the agreement for recovery of amount. In the meantime, applicant is seeking appointment of Receiver to take possession of the equipment Caterpillar in I.A.No.II and is seeking order against alienation and transfer of the Caterpillar in I.A.No.III.

On looking to the application and the documents produced, applicant has made out a prima facie case at this stage to dispense with notice in the first instance and to restrain respondents from alienating equipment Caterpillar without making payment of the due amount to the applicant, as otherwise very purpose of the order would be defeated by delay. Regarding appointment of Receiver to take possession of Equipment prayed in I.A.No.II, notice can be issued to the respondents. Accordingly, following order is passed:

ORDER

By an exparte ad-interim order on I.A.NO.III, respondents are restrained from disposing, alienating or encumbering the schedule equipment Caterpillar 424V2 Backhoe Loader of Sl.No.JTY00692 till next date.

The applicant shall comply with Rule 9(1) of High Court of Karnataka (arbitration proceedings before the courts) Rules 2001.

On compliance, issue interim order, notice on I.A.No.II & III and the main

**application to the respondents through RPAD,
if PF paid.**

Returnable by 10/11/2022.

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**