



**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

**Ravindra Hegde, M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru**

Dated this the 15th day of December 2022

COM.A.A.No.464/2022

Applicant

M/s. Caterpillar Financial Services
India Private Limited
6th Floor, Tower 'B', Prestige
Shantiniketan,
The Business Procinct,
Whitefield Main Road,
Bengaluru-560048.

(By Sri.R.R.T, Advocate)

/ v e r s u s /

Respondents

- 1.** Rudraksha Construction
(Prop. Kushal Singh Sisodiya)
aged about 23 years,
21, Veer Nagar, Eidgah Road,
Ujjain, Madhya Pradesh-456001.
- 2.** Dhyarmpal Singh Sisodiya,
aged about 21 years,
21, Veer Nagar, Eidgah Road,
Ujjain, Madhya pradesh-456001.

(Exparte)

ORDER

This application U/Sec.9 of the Arbitration & Conciliation Act is filed by the applicant praying to restrain the respondents from selling, alienating, transferring,

disposing off or dealing in any manner with the schedule vehicle / equipment which is in possession of the respondents and to appoint Mr. Rakesh, the representative of the applicant as Receiver to take possession of the vehicle/equipment which is lying with the respondent and to handover the same to the applicant for sale of the same and to realize the due of the applicant and praying to authorize the Receiver to take necessary police aid for taking possession of vehicle or equipment. In the alternative the applicant prayed to direct the respondents to provide adequate security to the applicant for sum of Rs.30,23,200/- to cover the outstanding loan amount and on failure to attach the respondents' bank account.

2. Brief facts of the applicant's case is as under:

The applicant company is engaged in providing lease financing of vehicles and equipment manufactured by Caterpillar throughout India and is represented by its authorized person. The 1st respondent, with 2nd respondent as guarantor approached the applicant and sought for financial assistance to purchase Caterpillar. The applicant company explained terms and conditions of the loan agreement and loan and security agreement (LSA) was executed. Total loan amount availed by the respondents was Rs.28,80,000/-. The respondents have agreed to repay the amount with interest, in monthly installments. The respondents have purchased Caterpillar and same is hypothecated to the applicant as collateral security. Contrary

to terms and conditions contained in the agreement, respondents have defaulted in payment of EMI and inspite of repeated requests, reminders and demands they have failed to regularize the loan account. There is outstanding due amount of Rs.30,23,200/- from the respondents as on 07/07/2022. Due to the breach committed by the respondents, applicant issued notice for termination of LSA on 13/08/2022 and informed the respondents about termination of the agreement and demanded the immediate payment of the entire outstanding amount. The respondents have not made payment. As per the agreement for default of the respondents to pay amount, the applicant is entitled to take possession of the vehicle or equipment hypothecated to the applicant. The agreement provides for arbitration to resolve the dispute and the applicants are taking steps to initiate arbitration proceedings. The respondents are likely to alienate the hypothecated property to cause loss to the applicant. As it is hypothecated, the applicant is entitled to take immediate physical possession of the equipment. Hence applicant has filed this application under Section 9 of the Arbitration & Conciliation Act seeking interim order to protect interest of the applicant and to secure its outstanding due till arbitration proceedings to be initiated or completed. If the order prayed is not granted, the respondents would alienate the schedule equipment/ vehicle and the applicant would not be in possession to recover its dues from the respondents.

With these averments, applicant has filed this application seeking order of interim relief.

3. The respondents inspite of service of notice have not appeared and are placed exparte.

4. Now the points that arise for my consideration are:

1. Whether applicant is entitle for order against the respondents from selling, alienating, transferring disposing of the schedule equipment / vehicle as prayed?

2. Whether Receiver is to be appointed to take possession of the vehicle/equipment from the respondents for being sold to realize legitimate dues under the agreement with police aid as prayed?

3. Whether the applicant is entitle for the alternative relief of adequate security equivalent to the due amount and for attachment of respondent's bank account as prayed?

4. What order?

5. Heard learned counsel for the applicant. Perused the records.

6. My answer to the above points are:

Point No.1: In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the Negative.

Point No.4: As per final order for the following;

REASONS

7. Points No.1 to 3: As these points are interlinked with each other, they are taken together for discussion, to avoid repetition.

8. Case of the applicant is that the respondent No.1 as borrower and 2nd respondent as guarantor, availed financial assistance from the applicant for purchase of schedule equipment which is Caterpillar by agreeing to the terms of the loan and also by agreeing to repay the amount with interest. According to the applicant, the respondents have hypothecated the schedule asset as collateral security for the loan. According to the applicant, respondents have continuously defaulted in payment of EMI and there is outstanding amount of Rs.30,23,200/- as on 07/07/2022. Since this amount is not paid, applicant has terminated the agreement by sending notice dated 13/08/2022. Since agreement provide for arbitration for resolution of dispute, present application is filed seeking order of interim measure. Respondents have not appeared and are placed exparte.

9. Applicant has produced copy of agreement entered between the parties. Invoice for purchase of equipment which is hypothecated to the applicant, copy of statement of account of this loan are also produced by the applicant. The applicant has also produced copy of notice of termination of LSA. Applicant has sent notice invoking arbitration clause and seeking appointment of Arbitrator on 23/09/2022. The copy of notice is also produced. Though applicant has prayed alternative relief of directing the respondent to pay the amount or to attach his bank account, applicant has not produced any details of the bank account of the respondent.

As such passing order of attachment of bank account of the respondent as alternative relief do not arise.

10. The documents and uncontested pleadings, prima facie show that the respondents had availed loan from the applicant by agreeing to terms and hypothecated the schedule asset, but have not cleared the loan as agreed and were irregular in payment of EMI. The applicant has stated that Rs.30,23,200/- is due from the respondents and statement produced show the same. Applicant has already cancelled the agreement and has taken steps for initiating arbitration as provided in the agreement. The applicant apprehends that the respondent may alienate the schedule asset and in that case the applicant would suffer injury. Since the schedule asset is already hypothecated to the applicant, on failure of the respondent to clear the loan and making payment of EMI regularly, the applicant is entitle to take possession of the schedule assets and then to dispose the same to recover the dues. The respondents have not appeared and have not raised any objection for the claim made by the applicant.

11. Though the total amount to which the applicant is entitle from the respondents is to be determined and decided in the arbitration proceedings to be initiated by the applicant for which notice is already given, till then if the schedule assets are disposed by the respondents, the applicant would suffer irreparable injury. Therefore, it is proper to restrain the respondents from disposing, alienating or encumbering the schedule equipment. Since the schedule equipment or asset

is already hypothecated to the applicant, the applicant is entitle to take possession of the same, so that the secured assets would be available to the applicant for recovery of the amount. If the schedule assets are disposed, before applicant taking possession, applicant would be remedy less. Therefore it would be proper to restrain the respondents from alienating, disposing or encumbering the schedule equipment. At the same time representative of the applicant Mr.Rakesh is to be appointed as Receiver to take possession of the schedule equipment from the respondents. Though the applicant has prayed for permission to the receiver to sell the equipment to recover the amount, equipment could be sold after determination of the arbitration dispute in arbitration proceedings to be initiated. Till then it is proper to permit the representative of the applicant's company who is to be appointed as Receiver to take possession of the schedule vehicle lying with the respondent and keep in it in safe custody till the arbitration proceedings are concluded or the claim of the applicant is finally decided and settled. For taking possession, Receiver can also be permitted to take necessary police aid if necessary. Accordingly the application is to be partly allowed. Prayer for alternative relief are to be rejected. Accordingly points No.1 to 3 are answered.

12. Point No.4: In view of the discussion made above points, I proceed to pass the following;

ORDER

Application filed U/S. 9 of Arbitration and Conciliation Act is partly allowed.

The respondents are restrained from disposing, alienating or encumbering the schedule equipment Caterpillar 424V2 Backhoe Loader of serial No.JTY00692, till appointed Receiver taking possession of the same or till completion of arbitration proceedings, whichever is earlier.

Sri. Rakesh—representative of the applicant is appointed as Receiver to take possession of Schedule equipment, with permission to take police aid if necessary, and to keep the same in his safe custody till passing of any order by the arbitrator to be appointed or till arbitration proceedings is concluded, whichever is earlier.

[Dictated to the Judgment Writer; transcript thereof corrected, signed and then pronounced by me, in the Open Court on this the **15th day of December, 2022**]

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