Heard Sri. R.J advocate for applicant.

The applicant has filed this application under Section 9 of the Arbitration & Conciliation Act, 1996 against the respondents.

The applicant has filed I.A.No.I under Section 151 CPC to dispense with production of original documents along with the petition.

The applicant has filed I.A.No. 2 U/Sec. 9(D) of Arbitration and Conciliation Act, 1996 r/w Sec. 151 CPC 1908 praying the Court to pass an order appointing a receiver to seize and take possession of the application schedule vehicle-Cater Pillar 2021D HINDUSTAN LOADER SL.No.L3Z02763 to the custody of the applicant with the assistance of jurisdictional police.

The applicant has filed I.A.No. 3 U/O XXXIX Rule 1 and 2 CPC r/w Sec. 9 of Arbitration and Conciliation Act, 1996 praying the Court to pass an order restraining the respondents, its agents, servants or assigns by way of temporary injunction from disposing off, alienating, encumbering or dealing in any way with the application schedule vehicle-Cater Pillar 2021D HINDUSTAN LOADER SL.No.L3Z02763.

I have heard arguments addressed by learned counsel for the applicant. I have gone through the main application, IA No.I, I.A.No. 2, I.A.No. 3 and affidavits and other materials available on record.

The production of original documents is dispensed with a direction to the applicant to produce the original documents whenever directed to do so.

The applicant is contending that the respondents No. 1 and 2 have availed loan of ₹.33,55,000/- to purchase the application schedule vehicle. They has agreed to repay the loan amount together with interest in 36 monthly installments. The respondent No.2 is a guarantor. The respondents are now liable to pay ₹.19,05,015 /- as on 25.03.2022 to the applicant company. In spite of repeated requests and demands the respondents have failed to pay the outstanding dues. Hence the applicant has filed this application. The applicant has stated that the respondents have not cleared the balance or offered to hand over the said vehicle. The respondents have hypothecated the said equipment. The respondents are trying to dispose off the said equipment. The respondents are preventing the applicant company from taking possession of the application schedule equipment. Hence, I.A.No. 2 and 3 are filed.

On a perusal of loan agreement it appears that the applicant company is entitled to have the custody of the hypothecated equipment in the event of borrower committing default in payment of loan amount. Article 21.2 of the loan agreement provides for resolution of the dispute through Arbitration. The applicant is contending that the respondents are due in a sum of ₹.19,05,015/- to the applicant company. As per Article 16.2 the applicant being the financier is entitled to have the custody of hypothecated equipment as the respondents have committed breach of terms and conditions of the loan. Having regard to the facts and circumstances of the case it is desirable to provide an opportunity to the respondents before passing orders on I.A.No. 2.

In order to protect the rights the applicant and to preserve the schedule equipment and to avoid multiplicity of proceedings it is necessary to pass an Order on I.A.No. 3 by dispensing with issuance of prayer notice on I.A.No. 3. If a notice is ordered on I.A.No.3 to the respondents it would defeat the purpose of filing the application. Hence, Issuance of prior notice on I.A.No.3 is dispensed with. Accordingly, I pass the following:

ORDER

The respondents or any persons claiming through or under them are hereby restrained by way ad-interim temporary injunction from alienating or creating 3rd party interest in respect of application schedule equipment vehicle- Cater Pillar 2021D HINDUSTAN LOADER SL.No.L3Z02763 till the next date of hearing.

Issue notice on main application and emergent notice on I.A.No. 2 and

3 and orders on I.A.No. 3 to the respondents through RPAD.

The applicant is directed to comply with Rule 9(1)(a)(b) of the High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001.

Call on 16.11.2022.

LXXXIX ACC& SJ, Bengaluru.

(14.10.2022),(CCH-90)