



**IN THE COURT OF LXXXVII ADDL.CITY CIVIL &
SESSIONS JUDGE, (EXCLUSIVE DEDICATED
COMMERCIAL COURT
AT BENGALURU (CCH.88)**

THIS THE 19th DAY OF NOVEMBER 2022

PRESENT:
SRI. VIRUPAKSHAIAH H M.,
B.Com., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Com.A.A.No. 487/2022

**PETITIONER/
APPLICANT:**

**M/s Caterpillar Financial Services
India Private Limited,**
6th Floor, Tower 'B', Prestige
Shantiniketan, The Business
Precinct, Whitefield Main Road,
Bengaluru, Karnataka – 560 0048

(Reptd by Sri. RRT - Adv)

AND

RESPONDENTS:

1. Pazhaniammal G

D.No. 168, Salamarathupatti Post,
Olaipatti, Krishnagiri,
Krishnagiri, Tamilnadu-635 304.

2. Govindaswamy M

D.No. 168, Salamarathupatti Post
 Olaipatti, Krishnagiri
 Krishnagiri, Tamilnadu-635 304.

(Exparte)

Date of Institution of the suit	18.10.2022
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Arbitration Suit
Date of commencement of recording of evidence	-
Date on which judgment was pronounced	19.11.2022
Total Duration	Year/s Month/s Day/s 00 01 01

(VIRUPAKSHAIAH H M),

LXXXVII Addl.City Civil & Sessions Judge,
 (Exclusive dedicated Commercial Court)
 Bengaluru.

O R D E R S

The petitioner/applicant has filed the above petition
 under Section 9 of the Arbitration & Conciliation Act, 1996,

(hereinafter called as 'the Act') for measure of custody of hypothecated vehicle/equipment shown in the schedule.

2. It is the case of petitioner/applicant that its company is incorporated under the Companies Act, 2013 and registered office is at Bengaluru and engaged in providing lease financing of vehicles and equipment manufactured by Caterpillar to an individuals and enterprises throughout India. The respondent No.1 is the borrower, who availed financial assistance for the purchase of Caterpillar, 424B2, Backhoe Loader having Sl. No. JTH06257. The respondent No.2 stood as the guarantor to the various facilities extended by the applicant company.

3. It is further stated that the respondents approached the applicant company and sought financial assistance to purchase Caterpillar, Caterpillar, 424B2, Backhoe Loader having Sl. No. JTH06257 and the applicant company sanctioned the loan and both together executed Loan and Security Agreement on 22.06.2020 and availed

loan of Rs. 21,50,000/- and was to be repaid together with interest @ 10.50% p.a., in 48 EMI of Rs.56,363/- and based on the loan sanctioned, the respondents purchased the above said Caterpillar and hypothecated to the applicant company as collateral security. Thereafter, the respondent defaulted in payment of EMIs and inspite of repeated requests and reminders, they failed to repay the same and the respondents was due to a sum of Rs. 21,86,079/-. Due to which, the applicant company issued a legal notice to repay the due amount within 7 days.

4. It is further stated that the applicant company in accordance with the powers conferred under Clause 16 of the LSA is entitled to take possession of the said schedule equipment/vehicle hypothecated to the applicant company. On the disputes and differences that would deem to have thus arisen between the contracting parties, the applicant company considered it necessary to appoint the Arbitrator through Bangalore Arbitration Centre. Further, upon failure to pay the entire outstanding dues of the applicant

company, the respondents have no right title or interest to retain physical possession of the said equipment. It is further stated that the applicant has approached this court for exercise of power vested under Section 9 of Arbitration and Conciliation Act, 1996. If the interim custody of the schedule equipment is not granted the applicant company will be put to irreparable loss, hardship and injury and the schedule equipment would be alienated by the respondents. The applicant company apprehends that owing to its malafide intentions. If the applicant company is prevented from taking possession of the hypothecated machinery, there is a threat that the machinery being illegally converted and sold to some third party by the respondents. Accordingly, it has prayed for allowing the application.

5. After service of notice, the respondents did not appear. Therefore, absolutely there is no any objection by other side.

6. Now, the points that are arise for my consideration are:-

1. Whether the petitioner is entitled to interim measure of custody of the hypothecated vehicle/equipment shown in the schedule ?
2. What Order ?

7. My answer to the above Points are as under:

Point No.1 :- In the Affirmative.

**Point No.2 :- As per the final Order
for the following reasons.**

REASONS

8. **Point No.1 :-** The learned counsel for the petitioner would argued that the respondent No.1 is an individual and 2nd respondent stood as the Guarantor approached its Branch at Bengaluru and availed loan facilities of Rs. 21,50,000/- for the purpose of purchasing schedule equipment/vehicle. In consideration to the above loan, the respondents have executed Loan and Security agreement dated 22.06.2020 along with other connected

documents. The Loan and security agreement clauses provides for settlement of disputes by Arbitration and since, the respondent failed to pay the amount, the petitioner intends to invoke Arbitration clause and go for appointment of arbitrator. In the mean time, the respondent in order to deceive the petitioner, wants to remove the schedule vehicle from the area of business, it is necessary to issue interim measure to seize the vehicle/equipment. Since, they are hypothecated there is no impediment to seize the vehicle/equipment. In view of the above fact, since, there is no objection by the respondent, the interim measure sought for by the petitioner can be entertained. Hence, I answer point No.1 in the affirmative.

9. **Point No.2 :-** For the aforesaid reasons, I proceed to pass the following Order.

O R D E R

The petition filed by the applicant U/S. 9 of Arbitration & Conciliation Act, 1996 is hereby allowed.

The petitioner is permitted to take the interim custody of vehicle/equipment as shown in the schedule.

No costs.

(Dictated to the Stenographer online, typed by him, corrected and then pronounced by me in the open court on this the **19th day of November, 2022**).

(VIRUPAKSHIAH H M),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated commercial Court)
Bengaluru.