

30.01.2019

Present: Ms. Chetna Bhalla, counsel for the plaintiff.

Issue summons to defendant no. 1 through all modes i.e. PF/RC/approved courier/registered post/speed post as well as affixation on filing of PF by the plaintiff within three weeks from today, returnable on **27.03.2019**.

An application under Order 40 Rule 1 r/w Section 151 CPC filed on behalf of the plaintiff for appointment of Receiver. Heard on the application. In view of submissions made by counsel for plaintiff and the averments made in the application, the application is allowed.

It is the case of the plaintiff that plaintiff disbursed a loan of **Rs. 4,71,900/-** under loan agreement no. **LANOD00034094149** for the purchase of a vehicle namely **AMAZE/S MTP** bearing registration No. **UP-16BD-5137** and under the terms and conditions of the said agreement, the said vehicle was hypothecated in favour of the plaintiff. The loan was to be repayable in **60** monthly installments of **Rs. 10,029/-**. Ld. Counsel for the plaintiff has contended that after the receipt of loan amount, defendant failed to repay the monthly installments of the loan granted to him. In spite of several reminders, visits and repeated requests made by the plaintiff, impressing upon the defendant to abide by the terms of the contract, defendant failed to make the payments and adhere with the terms and conditions of the loan agreement. It is also contended that despite sending loan recall notice dated **19.09.2017**, defendant has deliberately violated the equated monthly installments as per repayment schedule. Prayer has been made for appointment of **Shri Gyanesh Kumar**, Representative of the plaintiff as the receiver to take possession of the vehicle in question. Keeping in view the totality of the facts and circumstances, and for the preservice of hypothecated vehicle, I consider it just and convenient to appoint **Shri Gyanesh Kumar** as a Receiver to take ex-parte ad-interim possession of the hypothecated vehicle i.e. **AMAZE/S MTP** bearing registration No. **UP-16BD-5137** till final disposal of the application on merits with the following stipulations:

(i) that the receiver is directed to first give offer to the defendant for making payment of defaulted EMIs/amount before seizure of the vehicle.

(ii) that if the defendant make payment of the outstanding installments as on date of possession, the receiver shall release the vehicle in question to the defendant on Superdari subject to an undertaking by the defendant to the receiver for regular payment 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.

(iii) that if the defendant 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 defendant make the payment of the outstanding installments within the said period, the receiver shall release the vehicle to the defendant subject to an undertaking as aforementioned.

(iv) that if the defendant does not make the payment of the outstanding amount to the plaintiff within 60 days, the receiver, with the prior permission of the arbitrator; would be authorized to sell the vehicle in question in public auction with prior written notice (to be sent by speed post AD) of the date of auction to the defendant at the address(es) mentioned in the agreement or the address from where the vehicle is taken into possession so that the defendant may also be able to participate in the auction to enable the plaintiff to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceeding and shall submit the same before the arbitrator alongwith his final report. Copy of the report shall be submitted by the receiver to the arbitrator.

(v) that the receiver may take the police aid if required. This order itself would amount to a notice/directions to the SHO of the concerned area to provide the requisite assistance to the receiver for repossession of the vehicle.

(vi) that the receiver shall give the copy of the order to the person from whose custody he takes the vehicle.

(vii) that the receiver shall issue appropriate receipt to the person from whose custody he takes the vehicle and will also note therein the condition of the vehicle.

(viii) that the receiver shall ensure that the vehicle is kept in the same condition.

(ix) that the receiver shall ensure that there possession of 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.

(x) that at the time of taking custody of the vehicle, the receiver will 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 and shall ensure that the vehicle is kept in same condition in which it was seized and ;

(xi) that the receiver shall prepare an inventory of the goods/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the vehicle is seized.

(xii) that 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 case, the receiver shall take the possession of the vehicle from the borrower's residence only

(xiii) that the parties are at liberty to apply to the Ld. Arbitrator for modification of this order.

This order is subject to the condition that the vehicle shall however, not be sold or disposed of or parted with without the permission of this court. The receiver shall also be bound to produce the vehicle in the court as and when required. The report be filed by the receiver within a week of the seizure of the vehicle containing all the details including that of the person from whose possession and place from where the vehicle has been seized.

Copy of the order be given dasti to counsel for plaintiff.

(Sunil Beniwal)
ADJ-02/Central/THC
Delhi/30.01.2019

(BG)