

**In the Court of Sh.Harbans Singh Lekhi,
Additional District Judge, Faridkot.**
(Unique Identification No.PB0113)

Case Type	ARB
Case No.	02 of 1.4.2019
Registration/CIS No.	Arb/2/2019
CNR No.	PBFD01-001177-2019
Date of Decision	25.9.2019

Swaran Singh, aged about 51 years, son of Jugraj Singh, resident of Bajakhana Road, Kothe Santa Singh, Jaitu, Tehsil Jaitu, District Faridkot.

.....Petitioner.

Versus

Mahindra & Mahindra Finance Services Ltd., through its Branch Manager, Goniana Road, near Tinconi, Bathinda.

.....Respondent.

Petition under Section 9 of Arbitration and Conciliation Act

Present: Shri Sandeep Khosla, Advocate, counsel for the petitioner.
Shri Ranvik Mehta, Advocate, counsel for the respondents.

JUDGMENT

Swaran Singh, petitioner, has filed this petition under Section 9 of Arbitration and Conciliation Act (hereinafter to be referred as Act), for directing the respondent to release the Commercial Vehicle Mahindra Blazo-49, bearing registration No.PB-04V-4492, which is now in illegal custody/seizure of respondent at Kandla (Gujrat) and further restraining it from taking possession or seizure of the above vehicle.

2. Brief facts of the case of the petitioner are that he is owner of Mahindra Blazo-49, bearing registration No.PB-04V-4492, which was purchased by him with the financial help of respondent, bearing contract No.4336671 dated 11.8.2016. Said vehicle is under hypothecation of respondent till payment of 59 monthly installments of Rs.69093/-. Since 11.8.2016, petitioner is making payment of monthly installments of Rs.69400/- and last payment was made on 25.2.2019. The respondent has forcibly seized the above vehicle on 17.3.2019, at Kandla (Gujrat) and is now parked there. The plaintiff raised the matter with the respondent and its employees. However, they refused to listen to him and asking for illegal money from him. Previously, Aman Sularia, Manager of respondent company had also seized the above vehicle of petitioner, in Rajasthan, without any reason, with the help of his henchmen and released only after getting Rs.8000/-, in the month of October 2018. Only two installments are due towards the respondent. Since the vehicle has been seized by the respondent on 17.3.2019, therefore, petitioner is unable to pay the installments. He is ready to pay all the installments, as agreed, however, the respondent and its employees are trying to take wrongful gain by wrongfully seizing the vehicle on their whims. If the vehicle is not released, then petitioner will not be able to pay the installments, as the income from the vehicle is the only source of petitioner. The petitioner is suffering loss since 17.3.2019, as he has not been able to ply his vehicle. It is a commercial vehicle, so, the loss of vehicle is loss of clientage as

well as huge loss in the nature of income. The petitioner is dependent only on the income of said vehicle. There is a clause of arbitration between the parties, as per the agreement, therefore, the dispute, if any, between the parties, can be decided by the Arbitrator, under the Arbitration and Conciliation Act. Till date, there is no arbitration between the parties as respondent has not raised any demand for arbitration. The agreement between the parties was executed at Jaitu. The vehicle is registered before the Regional Transport Authority, Faridkot and hence, this Court has territorial jurisdiction to hear and try this petition. Petitioner asked the respondent to release the above vehicle, but respondent refused and threatened that they will continue to seize the vehicle at any time. Hence, this petition.

3. Alongwith petition, petitioner has also filed application for interim injunction directing the respondent to release the above vehicle, till the decision of main petition.

4. Upon notice, respondent appeared through counsel and filed reply by taking preliminary objections that petition is not maintainable in the present form. The petitioner cannot take advantage of his own wrong and mislead the Court by misrepresenting and concealing the facts from the Court. This Court has no jurisdiction to try and entertain the present petition. As per own admission of petitioner, the Truck in question was repossessed by the respondent company at Gandhidham (Gujrat) and as per agreement, agreement in question was executed at

Bathinda, so, this Court has no jurisdiction to entertain this petition. Apart from present agreement No.433671, petitioner has also entered into an agreement No.3831581 dated 27.8.2015, vide which he has taken finance for purchasing vehicle Mahinda Traco 40, from respondent company. In both the agreement, there was clause No.14, in which cross liability has been mentioned. As per cross liability, it has been agreed that if any borrower or guarantor has any default to the financier, he would be liable from other agreement. The petitioner, without paying the complete finance money to the respondent, has sold the vehicle, which is financed vide agreement No.3831581, to third party, without permission from the respondent company. The vehicle financed vide agreement No.3831581, is presently untraceable and considerable amount is due against the petitioner. So, as per previous conduct of petitioner, the said vehicle is not safe, so, possession of vehicle is taken as per clause of agreement. Due to the default of petitioner, the respondent is well within his right to exercise its right to take possession of vehicle under finance. On merits, it is denied that petitioner is owner of Mahindra Blazo-49, bearing registration No.PB-04V-4492. As per agreement, till the payment of whole amount and issuance of NOC by the finance company, the company, who has financed the vehicle, is the owner and has first charge over the vehicle financed. It is admitted that vehicle is under hypothecation of respondent company. The petitioner is bound to pay 59 installments of Rs.69400/- per month, as per the agreement. The petitioner was not regular in payment

of installments and was not paying the installments in time. There was often considerable delay in the payments, thus, considerable amount became due towards him. It is submitted that installment paid on 25.2.2019 is not for the month of February 2019, however, the same was paid for previous pending installments. It is denied that respondent has forcibly seized the vehicle of the petitioner on 17.3.2019. It is submitted that on 6.4.2019, total amount of Rs.3,37,310/- was outstanding against the petitioner, alongwith Rs.2012600/- of future installments. All the other expenses of repossession, defaults etc. are to be added in the total. The petitioner never asked the respondent to release the vehicle, so, there is no question for refusing the same. It is denied that agreement was executed at Jaitu. It is submitted that agreement was executed at Bathinda and same finds mention in the agreement itself. The petitioner has also misrepresented the facts to mislead the Court, for the purpose of creating jurisdiction. This Court has no territorial jurisdiction to try and entertain this petition. The remaining averments made in the petition have been denied and lastly prayed that petition be dismissed with costs.

5. Respondent also filed reply to application for interim injunction on the similar averments, as made in the main reply and prayed that application be dismissed.

6. I have heard Sh.Sandeep Khosla, Advocate, learned counsel for petitioner and Sh.Ranvik Mehta, Advocate, learned counsel for the respondent and have carefully gone through the record of the case.

7. Learned counsel for the petitioner has argued that the petitioner purchased Mahindra Blazo-49, bearing registration No.PB-04V-4492, with the financial help of respondent, vide agreement No.4336671 dated 11.8.2016. Said vehicle was under hypothecation of respondent till payment of 59 monthly installments of Rs.69093/-. The petitioner is regularly making payment of installments and last payment was made on 25.2.2019, but on 17.3.2019, the respondent has forcibly seized the said vehicle, at Kandla (Gujrat) and is now lying parked there. He argued that said vehicle is only source of income of petitioner and he is suffering loss since 17.3.2019 and is not able to make the payment of remaining installments. He further argued that without getting any order from the Court, the respondent has no right to take possession of above vehicle forcibly and even as per clause of arbitration of the agreement, respondent has not referred the matter to the Arbitrator. He further argued that agreement in question was executed at Jaitu and vehicle in question was got registered by the RTI, Bathinda, therefore, this Court has territorial jurisdiction to decide this petition, so, petition is maintainable and prayed that same be allowed. In support of his contentions, he has placed reliance upon ***Hinduja Leyland Finance Limited Versus Jaffer Khan and another 2014(5) RCR(Civil) 327***, wherein no Court notice was served on the respondents (borrower) nor the Advocate Commissioner while seizing the vehicle served order of petition, but only order appointing the Advocate Commissioner to seize the vehicle and the vehicle was seizure.

The order was set aside by the Hon'ble Madras High Court and finance company was directed to hand back the possession of the vehicle of respondent No.1 without any further delay. Reliance was also placed upon ***Sumer Builders Pvt. Ltd. Versus Narendra Gorani 2016(2) RCR (Civil) 102***, wherein it has been held by the Hon'ble Apex Court that petition under Section 9 of the Arbitration and Conciliation Act, can be entertained in the absence of arbitral proceedings. Reliance was also placed upon ***Gayatri Prasad V. Dwivedi Versus Mahindra and Mahindra Financial Services 2013(8) RCR(Civil) 910***, wherein the loan was availed at Delhi, application was filed by the respondent under Section 9 of the Act at Delhi, before District Court. The Hon'ble Bombay High Court has held that in view of Section 42 of the Act, petition was filed under Section 9 of the Act, before District Judge, Delhi and agreement was executed at Delhi, therefore, Delhi Court alone shall have jurisdiction over arbitral proceedings and petition was returned to the petitioner to approach the competent Court. Reliance was also place upon ***Kotak Mahindra Prime Ltd. Versus Kamal Chauhan and another 2015(54) RCR(Civil) 127***, wherein petitioner advanced loan to respondent, repayable in 48 monthly installments. Respondent committed default after payment of 8 EMI's. Petition under Section 9 of the Act was filed for appointment of receiver to take possession of vehicle, which was allowed and further direction was given with regard to take over the possession of the said vehicle. Clarification was also made that if respondent does not make the payment

of outstanding amount to appellant, within 60 days, receiver with the prior permission of the arbitrator would be authorized to sell the vehicle in public auction.

8. On the other hand, learned counsel for respondent has argued that agreement in question was executed at Bathinda and not at Jaitu, as alleged and the vehicle is now lying parked at Kandla (Gujrat), therefore, this Court has got no territorial jurisdiction to decide this petition. He further argued that petitioner has committed default in making payment at due date and thus, was irregular in making payment, which has been duly shown in the statement of account. He further argued that petitioner himself has surrendered the vehicle to the respondent company, at Kandla (Gujrat) and petitioner has also earlier filed a Civil Suit regarding the matter in dispute, which was withdrawn by him, but he has filed this petition by concealing the true facts and has not come to the Court with clean hands. Therefore, petitioner is not entitled to the relief claimed in the petition, so, petition as well as application for grant of interim injunction, are liable to be dismissed.

9. I have given my thoughtful consideration to the rival contentions raised by learned counsel for the parties.

10. Perusal of record reveals that loan agreement was executed between the parties on 11.8.2016, at Bathinda and vehicle Mahindra Blazo-49, bearing registration No.PB-04V-4492, was purchased by the petitioner, with the help of respondent and said vehicle

is hypothecated with the respondent, till payment of 59 monthly installments of Rs.69093/-. As per statement of account, last payment was made on 25.2.2019. Earlier, petitioner filed a Civil Suit against the respondent, for permanent injunction restraining them from interfering in any manner in plying/driving or of any use of the vehicles i.e. Trolleys bearing registration No.PB-04V-4492 and PB-03AJ-6580, under the garb of recovery of alleged arrears of loan amounts and in that suit, respondent moved an application under Sections 5 and 8 of Arbitration and Conciliation Act and later on, suit was dismissed as withdrawn by the plaintiff. Though as per documents produced on record by the respondent, petitioner himself has surrendered the vehicle to the respondent, at Kandla (Gujrat) and intimation of the same has been given to Police Station Bajakhana, District Faridkot, but this fact has not been mentioned by the respondent in reply to the application, rather it is mentioned that petitioner has considerable default and vehicle, as per his previous conduct, is not safe, so, the possession of the vehicle is taken as per clause of the agreement. The petitioner in petition has categorically mentioned that respondent has forcibly seized the said vehicle on 17.3.2019. If the petitioner has committed any default in making payment of the loan or delayed the payment of installment, then as per the clause 15 of the loan agreement, the matter can be referred to the Arbitrator, but till date, matter has not been referred to the Arbitrator and the respondent has also not filed any application under Section 9 of the Act, before any Court, for

repossessing the above vehicle. It, thus, shows that the vehicle in question has been seized by the respondent without any order of the Court and is liable to be released to the petitioner.

11. So far as the jurisdiction of filing the petition is concerned, though the agreement in question, was executed at Bathinda and vehicle is now lying parked at Kandla (Gujrat), but the petitioner is resident of Bajakhana Road, Kothe Sant Singh, Jaitu, District Faridkot and vehicle has been registered with RTO, Faridkot, and earlier the application under Sections 5 and 8 of Arbitration and Conciliation Act, was filed by the respondent in a Civil Suit, filed by the petitioner, in the Civil Court, Faridkot, therefore, as per Section 42 of the Act, this Court has jurisdiction to decide this petition and same is maintainable before this Court.

12. Resultantly, petition is allowed with costs and respondent is directed to release the Commercial Vehicle Mahindra Blazo-49, bearing registration No.PB-04V-4492, which is now in custody/seizure of respondent, at Kandla (Gujrat) and further restrained from taking possession or seizure of the above vehicle, forcibly and illegally, except in due course of law. As main petition has been allowed, so, application for interim injunction, stands disposed of. Memo of costs be prepared. File be consigned to record room.

Pronounced in open Court.

Dated:25.9.2019

(Sonia Devi)

**(Harbans Singh Lekhi),
Additional District Judge,
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Present: Shri Sandeep Khosla, Advocate, counsel for the petitioner.
Shri Ranvik Mehta, Advocate, counsel for the respondents.

Statement of account produced, whereas loan agreement is already on file. Therefore, application for producing loan agreement and statement of account, stands disposed of.

Augments heard on main petition as well as on application for interim injunction. Vide my separate detailed judgment of even date, petition filed by the petitioner has been allowed with costs, as detailed therein. As main petition has been allowed, so, application for interim injunction, stands disposed of. Memo of costs be prepared. File be consigned to record room.

Pronounced in open Court.

Dated:25.9.2019

(Sonia Devi)

**(Harbans Singh Lekhi),
Additional District Judge,
Faridkot.
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