

Misc. case No.5353/2022

Order No.02 / dated 29.09.2022

The case record is received by way of transfer.

Ld. Advocate for the petitioner moves the application under **Section 9** of the **Arbitration and Conciliation Act, 1996**.

Perused the petition supported by an Affidavit and the documents annexed thereto. Issue Notice.

Requisites at once. To **02.01.2023** for S.R. and requisites at once.

At the time of hearing, ld. Advocate for the petitioner places the prayer for appointment of Receiver in respect of one Vehicle (CATERPILLAR 424 BACKHOE LOADER Model) having Registration No.UP14JT4281, Engine No.4H32011822699 and Chassis No. BM1011908568.

Perused the copy of the Loan Agreement. Considered.

Since it appears that a huge amount of money is lying due which is payable by the respondent to the petitioner in terms of Agreement executed by and between the parties hereto, there is a strong prima facie case in favour of the petitioner herein and it goes without saying an interim order can be given in case of apprehended danger, and if balance of convenience and inconvenience is tilted in favour of the parties seeking such interim Order, and if the said Vehicle is removed to any unknown place or if third party interest is created in respect of such Vehicle in any manner whatsoever, the petitioner shall suffer irreparable loss and injury. Now, it appears that such balance of convenience and inconvenience is tilted in favour of the petitioner and accordingly, it is considered that the petitioner has made out a good prima facie case in his favour.

It appears from the Agreement that all differences, disputes are to be referred to an Arbitrator appointed by the petitioner. In this case, the Arbitrator is not appointed by the petitioner in terms of the relevant Agreement. However, as the petitioner apprehends that there is every possibility of selling, alienating or encumbering the **Vehicle** in question, this Court is inclined to **allow** the prayer of the petitioner **on condition** that **the petitioner shall refer the matter to the Arbitrator within 90 days from the date of this Order, in view of Section 9 (2) of the Arbitration and Conciliation Act, 1996, as amended till date, and in default, this Order shall stand automatically vacated.**

Accordingly, Saranika Ghosh, ld. Advocate, be **appointed as Receiver** to make an inventory of the Suit Vehicle. Ld. Receiver shall upon notice to all parties make inventory of the Suit Vehicle and submit Report by **02.01.2023**. In the event there is any obstruction in making such inventory, necessary police help may be obtained. Ld. Receiver is entitled to a remuneration of Rs.6,000/- to be paid by the petitioner. The expenses to be incurred by the Ld. Receiver shall be borne by the petitioner. Petitioner is also directed to serve copy of the petition, along with documents relied upon by 30.09.2022 and file an Affidavit of Service to that effect.

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(Contd.....)

So long the **Vehicle in question** shall remain in the custody of the Receiver or his/ her authorised agent, **he/ she shall remain responsible** for any loss and damage, if any, caused to the said Vehicle in question.

Issue Writ accordingly.

The petitioner is directed to submit papers by the date fixed, showing that the Arbitration proceeding has commenced, in default, the above Order shall stand vacated.

Ld. Advocate for the petitioner is requested to serve copy of the petition upon Ld. Receiver.

D/ C by me

Sd/- Sujasha Mukherji

Judge Bench III

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