

ARBTN/
Capital First Ltd. Vs. Nitin Sharma
18-01-2018

Fresh petition received by way of assignment. Be checked and registered.

Present: Learned counsel for the petitioner.

Vide separate order of even date, interim relief for appointment of a Receiver is granted. Copy of the order be given dasti to the counsel for petitioner.

Issue notice of this petition to the respondent on filing of PF and RC returnable on 07-03-2018. Steps be taken within seven days.

(Deepak Jagotra)
District & Sessions Judge (NE)
Karkardooma Courts, Delhi
18-01-2018

IN THE COURT OF SHRI DEEPAK JAGOTRA,
DISTRICT & SESSIONS JUDGE, NORTH EAST DISTRICT,
KARKARDOOMA COURTS, DELHI

ARBTN/

In the matter of;

Capital First Ltd.

Versus

Nitin Sharma

Arguments heard on:18-01-2018

Order announced on:18-01-2018

ORDER

1. This is an application filed by the petitioner seeking interim relief for appointment of a Receiver to take possession of security/asset i.e. Splendor (Two Wheeler).

2. I have heard learned counsel for the petitioner and carefully perused the record.

3. Learned counsel for petitioner submits that a Receiver may be appointed ex parte as there is every likelihood that respondent may dispose of/ sell/ transfer the vehicle in question or may create any third party interest in the vehicle in question. Learned counsel for petitioner further submits that if ex parte order is not passed, it would seriously hamper the case of the petitioner and the purpose of filing the present petition would be frustrated. Learned counsel for petitioner prays that a Receiver may be appointed to repossess the vehicle in question.

4. Brief facts relevant for the disposal of present application may now be indicated.

5. The respondent had applied for a loan for the purposes of purchasing vehicle Splendor (Two Wheeler) bearing Registration No.DL-5SAW-6066 Engine No.HA10ERGHJA2488 Chassis No.MBLHA10CGGHJB6500.

Pursuant to the loan request, the respondent was granted a loan of Rs.46,000/- agreement of which is reduced into writing by way of Vehicle Finance Loan Agreement dt.12-11-2016. It was agreed upon by the respondent that the loan amount shall be repaid in 18 EMIs of Rs.3054/- each. It is further transpired that respondent has paid 3 EMIs out of the fixed intallments and he has defaulted in making payment of 6 installments and remaining EMIs are still due to be paid. It is further found out that the respondent had not paid the dues despite umpteen number of requests and demands by the petitioner and service of Termination Notice dt.04-01-2018 which was duly sent but the respondent did not pay any heed to the same.

6. Considering the fact that respondent had taken a loan for the purchase of vehicle Splendor (Two Wheeler) and executed Vehicle Finance Loan Agreement dt.12-11-2016 and subsequently, he did not honour his commitment by making good the EMIs against discharge of said loan, the petitioner has got a good prima facie case in his favour. Since the respondent has defaulted in making the EMIs, the balance of convenience lies in favour of the petitioner and against the respondent.

7. Considering the fact that petitioner had advanced a loan for the purchase of vehicle Splendor (Two Wheeler) and the amount is due towards discharge of loan against the respondent, the petitioner would suffer irreparable loss and injury if the interim relief is not granted. There is also likelihood that respondent may dispose of the vehicle in question. Therefore, prima facie, a case for appointment of a Receiver to take possession of the vehicle in question has been made out in the light of given facts and circumstances of the matter especially considering the fact that loan amount has been given by the petitioner and it is the boundan duty of the respondent to have adhered to the EMIs as stipulated in the Loan Agreement which he completely fails to honour.

8. Accordingly, Shri Manas Kumar, Authorised Representative of the petitioner company is appointed as Receiver with the direction to repossess the vehicle Splendor (Two Wheeler) bearing Registration No.DL-5SAW-6066

Engine No.HA10ERGHJA2488 Chassis No.MBLHA10CGGHJB6500 which is found out in possession of whosoever or at whatsoever place till further orders. Receiver is directed to comply with the following directions;

- a. Receiver is directed to note down the condition of the vehicle and to take the photographs of the vehicle from all sides and shall ensure that vehicle is kept in the same condition as it was repossessed.
- b. Receiver shall prepare inventory of the goods/ accessories attached with the vehicle and copy of the same shall be delivered to the person from whom the vehicle is repossessed.
- c. An appropriate receipt shall be given to the person from whose custody the vehicle is repossessed and the vehicle in question shall not be sold or disposed of or parted with without due permission of the Court.
- d. If respondent makes the payment of the outstanding installments as on date of possession, the Receiver shall release the vehicle in question to the respondent on *Superdari* subject to an understanding by the respondent to the Receiver for regular repayment of the 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.
- e. If the respondent 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 respondent makes the payment of the outstanding installments within the said period, the Receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.
- f. If the respondent does not make the payment of the outstanding amount to the petitioner within 60 days, the Receiver with the prior permission of the Arbitrator would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post / Registered AD) of the date of auction to the respondent at the address / addresses mentioned in the Loan Agreement or the address from where the vehicle is taken into possession

so that the respondent may also be able to participate in the auction to enable the petitioner to fetch maximum amount from the sale of the vehicle. The Receiver shall carry out video recording of the auction proceedings and shall submit the same before the Arbitrator along with his Final Report.

g. Receiver shall inform the respondent the option of resolving the dispute amicably by settlement in Mediation Centre, Karkardooma Courts, Delhi and shall also give a copy of this order to the respondent or to the person at the time of repossessing the vehicle.

h. The petitioner shall refer the dispute to Arbitration in terms of Arbitration Clause 16 of Loan Agreement for appointment of an Arbitrator within two weeks from today and to inform the Court about the same on the next date of hearing.

i. Receiver shall be at liberty to take the assistance of the local police, if required, for taking over the possession of the impugned vehicle. The concerned SHO shall provide assistance to the Receiver as and when requested. However, the Receiver shall not stop a running vehicle on the road to forcibly take out the Driver to take the possession of the vehicle. The Receiver shall also not make any attempt to block the passage of a vehicle to bring it to a halt to take its possession.

j. 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 cases, the Receiver shall take the possession of the vehicle from the borrower's residence.

k. Receiver shall also ensure that the possession of the 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.

9. Receiver is further directed to submit his Report before this Court within 10 days of taking the custody of the impugned vehicle along with photographs and inventory mentioned above.

10. Issue notice of this petition to the respondent on filing of PF and

RC within seven days, returnable on 07th March, 2018.

**Announced in the open court
on 18th January, 2018**

**(DEEPAK JAGOTRA)
DISTRICT & SESSIONS JUDGE
NORTH EAST DISTRICT
KARKARDOOMA COURTS, DELHI**