

Misc. Case No. 305/2024
CNR No.WBHW0100 5895-2024
Present: Sonia Majumdar
District Judge, Howrah.
J.O. Code – WB01128

Order No. 03 dated 31.01.2025.

The record is put up today in view of the order dated 28.01.2025.

This is an application under Section 9 of the Arbitration & Conciliation Act, 1996, filed by the petitioner supported by an affidavit.

On the prayer of the learned Advocate for the petitioner, the application for ad interim injunction is taken up for hearing.

From the office report it appears that there is no caveat till date.

This is an application under Section 9 of the Arbitration & Conciliation Act, 1996 with a prayer for an order of interim injunction restraining the respondent, their men, agents and associates from disturbing the peaceful possession of the petitioner in respect of the Vehicle being No. WB 19H 4172 and/or from taking possession of the said vehicle from the custody of the petitioner and other reliefs.

It is the submission of learned Advocate for the petitioner that the petitioner purchased one vehicle bearing No. WB 19H 4172 by taking loan of Rs. 9,30,000/- on 22.11.2022 from the respondent being a finance company with monthly installments of Rs. 34,700/- to be paid in 36 installments and the petitioner paid 13 installments out of 36 installments total amounting to Rs, 4,86,595/- till the month of January, 2023. It is the further case of the petitioner that in spite of repaying substantial amount of loan, the respondent is claiming much interest than that of agreed upon as per loan Agreement. He further submits that the respondent is now trying to take forcible possession of the said vehicle by employing muscle man and also trying to obstruct from plying the said vehicle and lastly on 30.12.2024 an attempt was made to take forcible possession of the said vehicle. The petitioner filed a Title Suit being No. 718 of 2024 before the Court of learned Civil Judge (Junior Division), 1st Court, Howrah where he got an order of ad interim injunction on 24.05.2024 which was subsequently vacated by the learned Civil Judge (Junior Division), 1st Court, Howrah on the ground that the said Court has no jurisdiction to hear out any matter having arbitration clause and directed the parties to refer the matter to the Arbitrator and the petitioner vide letter dated 13.12.2024 has already named the Arbitrator on his part and requested

the respondent to name Arbitrator on their part. It is further submitted on behalf of the petitioner that to complete such process some time will be required and in the mean time, if the said vehicle is forcibly seized by the respondent by engaging muscle man, the petitioner will suffer irreparable loss. So, he has prayed for an order of interim injunction under Section 9 of the Arbitration and Conciliation Act.

Perused the case record being Misc. Case filed under Section 9 of the Arbitration & Conciliation Act, 1996 and the documents filed by the learned Advocate for the petitioner.

Considered.

On consideration of the same, I find that the petitioner has filed photocopies of documents like vehicle particulars, letter dated 03.05.2024, plaint of Title Suit No. 718 of 2024, Hypothecation cum Loan Agreement etc. From the demand notice dated 03.05.2024 it appears that he took loan of Rs. 9,30,000/- but remitted only Rs. 4,86,595/- as on 03.05.2024 which made an outstanding amount of Rs. 6,43,865/- as on 03.05.2024. However, as per the demand notice, the financial company has demanded to clear arrear outstanding of Rs. 181082.62 within 15 days. But he has failed to file the bank statement to ascertain the amount of money and the number of installments paid by him or whether the loan account has been declared as NPA or not.

Considering the facts and circumstances of the case and on perusal of the entire materials on record, I am of the considered opinion that an opportunity of being heard must be accorded to the opposite party/respondent before passing an ad interim order of injunction to the petitioner. Accordingly, I am not inclined to allow the prayer for an order of ad interim injunction at this stage. Hence, the prayer for ad interim injunction is refused at this stage.

Issue notice upon the opposite party/respondent asking him to show cause within seven days from the date of receipt thereof as to why petitioner's prayer for temporary injunction shall not be granted.

Petitioner is directed to file requisites at once for issuance of notice upon the opposite party/respondent.

To date.

Dictated and corrected by me.

D. J.

District Judge, Howrah.