

16.06.2021

Matter heard through Videoconferencing on Cisco Webex

Fresh Suit for Recovery of Rs.12,78,856.24 received through E-filing. It be checked and registered.

Present: Sh. Diwanshu, Counsel for the Plaintiff.

Hard copy of the suit has been filed.

Counsel for the Plaintiff stated that **an application U/s 12A of the Commercial Courts Act, 2015 r/w Section 151 CPC** has been filed.

Counsel for the Plaintiff stated on the lines of the averments made in the application and further stated that the present suit for recovery has been filed along with an application under Order XL Rule 1 CPC for appointment of ex-parte receiver and further stated that an urgent relief is sought as the Plaintiff has strong apprehension that the Defendants will dispose of the vehicle or will create third party interest in turn which will render the Plaintiff incapable to take possession of the vehicle in order to recover the loan amount.

Heard and perused the record. Having regard to all the facts and circumstances and also to the fact that an urgent relief has been contemplated by Plaintiff in the instant suit the exemption for the pre-institution mediation settlement granted. **The application accordingly stands disposed of.**

Counsel for the Plaintiff stated that **an application under Order XL Rule 1 r/w Section 151 CPC** for appointment of receiver for the hypothecated vehicle has been filed along with suit inter-alia praying therein for passing an ex-parte ad-interim order for appointing the receiver to take into his custody the vehicle.

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Counsel for the Applicant/ Plaintiff submitted on the lines of the averments made in the suit as well as in the application. He further submitted that the Applicant/Plaintiff has granted loan of Rs.14,45,327/- to the Defendants, for the purchase of the commercial vehicle namely '**FORCE TEMPO TRAVELLER**' bearing Registration **No.UP16-GT-2573** vide loan account no.**LVNOD00039500883**. He further submitted that the said loan was to be paid in **47 EMIs** of **Rs.37,836/-** but the Defendants have paid **12 EMIs** and defaulted in payment of **02 EMIs** and thus defaulted the repayment schedule, therefore, Applicant/ Plaintiff recalled the said loan facility vide notice dated **03.02.2021** requesting the Defendants to make the payment of the outstanding amount and also to hand over the peaceful possession of the aforesaid vehicle but the Defendants despite service of notice neither paid the outstanding amount nor handed over the peaceful possession of the abovesaid vehicle. He further submitted that there is a strong apprehension that the Defendants might dispose of security i.e. vehicle, which would cause irreparable loss to the Applicant/ Plaintiff, hence the present application.

I have heard the Counsel for the Applicant/ Plaintiff at length and have also carefully perused the entire records and the relevant provisions of the law.

From the documents placed on record, it is clearly indicated that the Applicant/Plaintiff entered into a loan agreement with the non-Applicant/Defendants for providing the loan of aforementioned amount for the purchase of the aforesaid vehicle. Further the statement of account shows that

Contd..3/-

the Defendants have defaulted in payment of **02 EMIs** due to which Applicant/Plaintiff issued the notice dated 03.02.2021 recalling the loan facility.

Keeping in view the aforesaid facts and circumstances of the case, I am satisfied that prima facie, case is made out for appointment of receiver to take possession of the aforesaid vehicle. Hence, I appoint **Mr. Asad Bhatnagar**, representative of the Plaintiff bank as a receiver to take the custody of the vehicle in question, wheresoever and in whomsoever possession it is found till further orders subject to the following conditions:-

- (a) that the receiver shall not sell or create any third party interest to the vehicle till further orders;
- (b) further in case defendants pay to the receiver all the outstanding EMIs which accrued till date it shall not take possession of the vehicle.
- (c) at the time of taking the vehicle in custody, the receiver shall take the photographs of the vehicle from different angles and prepare an inventory of the articles/accessories found in the vehicle and obtain the signatures of the person from whose possession the vehicle is taken, on the said inventory. He shall also supply a counter signed copy of the inventory to the said person.

The receiver shall be at liberty to take the assistance of the local police, if required, for the repossession of the vehicle. The concerned SHO is directed to provide police assistance to the receiver as and when requested. The receiver is directed to file his report within 14 days of taking the vehicle in custody (keeping in view the prevailing pandemic situation in the country).

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It is made clear that this order of appointing ex-parte receiver is to be implemented only after furnishing the complete particulars i.e. designation, residential address, employee code and mobile number of the receiver on record. The application accordingly stands disposed of.

Issue summons of the suit as well as notice of the application U/o XL Rule 1 CPC to the Defendants through District Judge, Gautam Buddha Nagar, U.P. with cover note as well as through Speed Post & Authorized Courier on filing of PF. PF be filed within three weeks.

The written statement shall be filed within 30 days from the date of service of summons upon the Defendants. If the Defendants fails to file the written statement within the said period of 30 days then on payment of such costs as the Court deems fit, they shall be allowed to file the written statement not later than 120 days from the date of service of summons. The 120 days period is the outer time limit and is mandatory and no extension can be granted. On the expiry of 120 days period, the Defendants shall forfeit the right to file the written statement.

An attested copy of the order be given to the Counsel for the Plaintiff **Dasti**, as per rules.

Put up on 04.08.2021 for further proceedings.

A copy of this order shall accompany the summons.

(M.C. Gupta)
District Judge (Commercial Court)-03
Central/ THC/ Delhi.
16.06.2021