

Arb no.84/26

Tata Capital Ltd. Vs. Magruddin Saifi

14.07.2024

Present: Sh. Tanishq Jain, Id. Counsel for petitioner.

Heard on consideration

At this stage, Id. counsel for the petitioner submits that out of the total **forty-eight (48)** equated monthly installments, the respondent has paid **eighteen (18)** installments and that, as on date, the respondent stands in default of **twelve (12)** installments. It is submitted that the last payment was made by the respondent on **31.10.2025** and that no installment has been paid thereafter, despite repeated reminders and requests. It is further submitted that although the tenure of the loan was to run up to **05.11.2027**, on account of the persistent defaults committed by the respondent in making regular payment of the installments, the entire loan facility was recalled vide loan recall notice dated **07.11.2024**, and that, as on date, the entire balance outstanding along with other charges, in the sum of **Rs.2,00,581/-**, is due and payable by the respondent.

In view of the aforesaid submissions, Id. counsel for the petitioner, at this stage, presses for adjudication of the application filed by the petitioner under Section 9 of Arbitration and Conciliation Act, 1996 read with 151 CPC seeking an ex-parte ad-interim order for appointment of a receiver for the purpose of repossessing the vehicle in question. It is submitted that despite repeated attempts made through various modes, the respondent is not responding, and that the petitioner has a strong

apprehension that the respondent will either dispose of the said vehicle by selling it off or will create third-party interest therein so as to frustrate the claim of the petitioner.

On being enquired by this Court, at this stage, as regards the maintainability of the present petition before this Court with respect to territorial jurisdiction, Id. counsel for the petitioner has drawn the attention of this Court to **Clause 13 of the “Terms and Conditions – Two Wheeler Loan” agreement (at pages 43 to 51 of the petition)**, which provides as under:–

“If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the ferpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the said Location (as defined below) in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator appointed in accordance with the Arbitration and Conciliation Act, 1996. The award of the arbitrator shall be final and binding on all parties concerned. The seat of arbitration for all purposes shall be Chennai unless any other place is agreed and mentioned in Annexure 1 hereto ('said Location'). The language of arbitral proceedings shall be English. The courts at the said Location shall have exclusive jurisdiction in respect of matters arising under this Agreement including any application for setting aside the award/appeal and the Lender/ Borrower(s) shall not object to such jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Borrower.”

It is submitted by Id. counsel that although under the primary clause of arbitration, as reproduced above, the place of

arbitration was fixed at Chennai, the said place was subject to the condition that the parties could agree to another place, as mentioned in Annexure-1 to the agreement. It is pleaded that, **as per Serial No. 13 of Annexure-1 (at page 50 of the petition)**, the place of arbitration has been fixed at Delhi. It is further submitted that though the agreement in the present case was executed at **Bulandshar**, the loan was disbursed from the branch of the petitioner at Rajendra Place, Delhi. Ld. counsel has also drawn the attention of this Court to the bank statement **(at page 55 of the petition)**, wherein the branch is shown as Rajendra Place, Delhi, which falls within the local limits of the jurisdiction of this Court. It is accordingly submitted that since the branch office of the petitioner from which the loan was disbursed, i.e. Rajendra Place, Delhi, falls within the local limits of this Court, this Court has the territorial jurisdiction to entertain and adjudicate the present petition.

Ld. counsel has further referred to the particulars of the vehicle in question, purportedly taken from the VAHAN portal of the Government **(the said information is at page 53 of the petition)**, to show that the vehicle in question stands hypothecated with the petitioner.

Having heard the submissions and after perusing the petition and the arbitration agreement, this Court is satisfied that the present petition, though pertaining to a commercial transaction, involves a claim of **Rs.2,00,581/** only, i.e. less than the specified value of Rs.3,00,000/-, and is, therefore, very much within the jurisdiction of this Court. This Court is also satisfied

as regards the existence of the arbitration agreement. Further, since the branch office from which the loan is stated to have been disbursed is situated within the local limits of this Court, and keeping in view the fact that, at this stage, the petitioner has approached this Court seeking interim relief citing an emergent situation before the constitution of the arbitral tribunal, this Court is of the opinion that the present application can be entertained and decided. In view of the existence of the arbitration agreement in terms of **Clause 13** of the agreement, the place of arbitration having been fixed at Delhi, the fact that the branch office of the petitioner from which the loan is stated to have been disbursed falls within the local limits of this Court, and further in the light of the ratio of the judgments of the Hon'ble Supreme Court in *“Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd. & Ors.”*, Civil Appeal Nos. 5370-5371 of 2017, decided on 19.04.2017, and *“BGS SGS Soma JV vs. NHPC Ltd.”*, (2020) 4 SCC 234, this Court is of the opinion that, prima facie, this Court has the territorial as well as the subject-matter jurisdiction to entertain and decide the present petition.

In the petition, it is averred that, at the request of the respondent, the petitioner granted a loan facility to the respondent and sanctioned a finance/loan amount of **Rs.1,94,225/-** on **05.12.2023** for the purchase of the vehicle **R15V4M**, bearing **Registration No. DL5SDB 8824**, **Engine No. G3N4E0578618** and **Chassis No. ME1RG67HAP0010288**, vide **Two Wheeler Loan-cum-Hypothecation Agreement** bearing **No. TCFTW0386000012408571** dated **05.12.2023**, duly executed between the petitioner and the respondent, whereby the respondent agreed to repay the said

amount in **forty-eight (48)** equated monthly installments of **Rs.5,990/-** each and, as security for the loan amount, hypothecated the said vehicle in favour of the petitioner. It is further averred that after availing the said loan, the respondent failed to pay the equated monthly installments as per the schedule, in spite of several reminders and requests made by the petitioner, and, as such, the petitioner was constrained to issue a legal notice dated **07.11.2024** recalling the loan facility, which notice is stated to have been duly served upon the respondent. It is further averred that despite service of the said notice, the respondent has not made any payment till date and that, as on **14.07.2026**, the respondent stands in default of **twelve (12)** installments. It is claimed that upon the failure of the respondent to pay the dues of the petitioner, the respondent has no right to retain possession of the vehicle, and that the petitioner apprehends that the said vehicle, which is the only security available with the petitioner against the loan amount, shall be disposed of by the respondent in violation of the contract between the parties.

With these submissions, the petitioner has prayed for the grant of an ex-parte order appointing **Sh. Ankit Sharma**, Recovery Manager of the petitioner, as receiver, to take into his custody the said vehicle from wherever it is found and from whosoever's possession it is found, and also to empower the receiver so appointed to sell the same and pay the sale proceeds to the petitioner for adjustment against the amount due.

Having heard the submissions of ld. counsel for the petitioner and having perused the record, and keeping in view the

fact that the vehicle stands hypothecated to the petitioner in terms of the agreement, **as per the information placed on record at page 53 of the petition**, that there has been default in payment of the EMIs, and that despite service of the loan recall notice the respondent has neither paid the outstanding amount nor handed over possession of the vehicle, a good prima facie case is made out in favour of the petitioner and against the respondent. Since the vehicle is hypothecated and constitutes the security for repayment of the loan, the balance of convenience also lies in favour of the petitioner. This Court is further of the view that if the ex-parte interim order, as sought, is not granted, the petitioner would suffer irreparable injury, inasmuch as it might lose the very security against which the loan was advanced, it being strongly apprehended, according to the petitioner, that the respondent may dispose of or part with possession of the vehicle in question in order to defeat the claim of the petitioner. As such, this Court is of the considered opinion that the vehicle in question is required to be preserved till the rights of the parties to the present petition are adjudicated upon by the competent forum. Accordingly, this Court allows the prayer for appointment of an ex-parte interim receiver, and **Sh. Ankit Sharma, Recovery Manager of the petitioner**, is hereby appointed as Receiver under Section 9(1)(ii) (d) of the Arbitration and Conciliation Act, 1996, on the terms mentioned hereinbelow:—

1. The Receiver shall take over possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es),

the Receiver shall be at liberty to recover the vehicle from wherever it is found. However, the Receiver shall not stop a running vehicle on the road or forcibly take out the driver in order to take possession of the vehicle.

2. The Receiver shall avoid taking possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member, or by an elderly, infirm, or physically or mentally challenged person.

3. The Receiver shall also ensure that the repossession of the vehicle does not result in any breach of the peace. In the event of any apprehension of breach of the peace by the person occupying the vehicle, the Receiver shall not proceed without the assistance of the police.

4. At the time of taking custody of the vehicle, the Receiver shall deliver a copy of this order to the person from whom possession is taken.

5. At the time of taking custody of the vehicle, the Receiver shall take photographs of the vehicle from different angles, along with the person(s) occupying the vehicle, as well as of the place from where possession is taken.

6. The Receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish a copy of the said inventory to the person from whom possession is taken.

7. After taking possession of the vehicle, the Receiver shall keep the vehicle in safe custody.

8. Irrespective of the loan recall notice having been issued and the entire outstanding amount having become due as on date, if the respondent makes payment of the installments outstanding as on the date of possession, the Receiver shall release the vehicle in question to the respondent on superdari, subject to an undertaking by the respondent to the Receiver for regular payment of the future monthly installments till the expiry of the tenure of the loan (if not already completed), along with a declaration not to part with the vehicle or create any third-party interest therein until the entire amount due is paid.

9. This order is subject to the condition that the petitioner shall refer the disputes to the Arbitrator within ninety (90) days from today and shall inform this Court about the same. This order is further subject to the condition that the vehicle shall not be sold, disposed of, or parted with without the permission of this Court. The Receiver shall also be bound to produce the vehicle before this Court as and when required. The Receiver shall file his report within one week of the seizure of the vehicle, containing all the details, including the particulars of the person from whose possession, and the place from where, the vehicle has been seized.

In view of the above, the application under Section 9 of the Arbitration and Conciliation Act, 1996, for grant of ex-parte ad-interim relief, is disposed of in the above terms.

Let notice of this petition be issued to the respondent, on filing of PF/RC, for **09.09.2026**.

The petitioner is permitted to accompany the process

server for the purpose of effecting service. The process server is directed to make three attempts to serve the respondent. In case of any deliberate refusal by the respondent to receive the process, the summons shall be served by way of affixation as well. The process be additionally served through the Nazarat Branch/process-serving agency of the office of the Ld. Principal District & Sessions Judge of the concerned district.

On the above-mentioned guidelines, the Receiver is directed to submit his report on the next date of hearing. Copy of this order be given dasti to ld. counsel for the petitioner as prayed for.

(NEERAJ SHARMA)
District Judge-04, Central
Tis Hazari Courts, Delhi
14.07.2026