

Delhi High Court Citicorp Finance (India) Limited vs Neeraj Jain And Anr. on 20 September, 2005 Author: B Chaturvedi Bench: B Chaturvedi JUDGMENT B.N. Chaturvedi, J. CM. 13597/05 Allowed. FAO. 283/05

1. The appellant is aggrieved by an order dated 17.8.2005 on a petition under Section 9 of the Arbitration and Conciliation Act, 1996 passed by learned additional District Judge refusing to grant ex parte interim measure regarding appointment of a receiver to take possession of the vehicle, namely, JCB bearing Engine No. 4H20790301631 and Chassis No. 3C1027255, and instead directing issue of notice to the respondents.
2. The appellant under a loan-cum-hypothecation scheme for financing, advanced an amount of Rs. 12,76,800/- to respondent No. 1 for purchase of a vehicle, namely, JCB bearing Engine No. 4H20790301631 and Chassis No. 3C1027255. The respondent No. 2 stood as guarantor for the amount so advanced. The amount of loan was to be repaid in 23 equated monthly installments of Rs. 61,854/- each. The vehicle was given to the respondent No. 1 under the loan-cum-hypothecation scheme and the respondents executed loan-cum-hypothecation agreement apart from certain other documents in favor of appellant-company. The amount was duly paid by the appellant-company to the dealer for the delivery of the vehicle to respondent No. 1. Last Installment of loan was repayable by 4th of July, 2005. The agreement came to an end on 4th of July, 2005 by efflux of time. The respondents failed to pay several Installments and an amount of Rs. 6,07,990.66 remained payable by them on the date when petition under Section 9 of the Arbitration and Conciliation Act was filed before the learned trial court.
3. The respondents are alleged to have failed to pay the aforesaid amount in spite of several assurances given by them. The appellant-company served the respective respondents with notices dated 28.6.2005 and 5.7.2005 calling upon them to pay outstanding amount. The respondents, however, in spite of service of such notices failed to respond and the appellant-company, therefore, approached the court with the petition under Section 9 of the Arbitration and Conciliation Act seeking re-possession of the vehicle in question to secure its outstanding amount.
4. Pressing for an ex parte order, reference was made in support of plea in that respect to an order of a Division Bench of this Court in FAO (OS 262/02 entitled "Kotak Mahindra Finance Limited v. Ashok Kumar and Ors.", and a Single Bench decision of this Court dated 10.8.2001 in Suit No. 1605/2001 entitled "Citicorp Finance (India) Limited v. Kulwant Singh". The learned Additional District Judge, however, felt that the aforesaid decisions were distinguishable on facts and while declining grant of ex parte interim measure, as prayed for, proceeded to issue notice of the application to the respondents.
5. "Kotak Mahindra Finance Limited v. Ashok Kumar and Ors." (FAO(OS) 262/02) involved more or less similar facts except that in the aforesaid case not even a single penny had been paid towards the Installments. This fact by itself would, however, not make much of a difference inasmuch as in the present case also almost 50% of the amount payable to the appellant-company remains yet to be paid by the respondents.
6. Clause 6(b) of the Loan-cum-Hypothecation Agreement stipulates repossession of the hypothecated asset by the appellant-company in the event of default in making payment of any part of loan amount on demand. In

the present case, in spite of service of demand notice, the respondents failed to make payment of outstanding amount of loan. A prima facie case for grant of an ex parte order for interim custody of the vehicle so as to secure the amount due and payable to the appellant by the respondents, would, thus, appear to be made out. Delay occasioned due to issue of notice, thereby postponing grant of interim protection to which the appellant appears entitled, is likely to defeat the object of filing the petition. It was just and proper on the part of learned court below, in the facts and circumstances, to have passed an ex parte order appointing a receiver to secure possession of the vehicle in question. Failure on the part of learned Additional District Judge to pass such an order amounts to denial of relief to the appellant which needs to be undone by setting aside the impugned order. The appeal is, accordingly, allowed and the impugned order is set aside. Mr. Manish Sharma, Field Representative of the appellant-company is appointed as Receiver authorising him to take over the possession of the vehicle, namely, JCB bearing Engine No. 4H20790301631 and Chassis No. 3C1027255 and to retain the possession and control thereof subject to further orders to be passed by the learned Additional District Judge after hearing the respondents. The Receiver is authorised to seek necessary police assistance if so required in order to seize the vehicle as aforesaid. 7. The appeal is disposed of in the aforesaid terms. 8. dusty.