

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present :

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 28th Oct. '14.

Arb. (P) No. 376 of 2013.

(Under Section 9 of the Arbitration and Conciliation Act, 1996)

M/s. Shriram Transport Finance Company Limited, having its registered office at No.-4, Lady Decikachari Road, Mokambica Complex, Mylapore, Chennai-600 001, and Branches all over India including one at Lewis Road, Bhubaneswar, Dist. - Khurda, Odisha, represented through its Power of Attorney Holder Sri Somdeb Joardar, aged about 39 years, S/o. Late Sitaldas Joardar working as Branch Manager, Shriram Transport Finance Company Ltd., Bhubaneswar Branch, at 2nd Floor, Geetanjali Complex, Lewis Road, Bhubaneswar, Dist. - Khurda, Pin-751 014.

... **Petitioner.**

-Versus-

1. Smt. Swarnnamayee Mishra, aged about 26 years, D/o. Nabakishore Mishra, At - Plot No.HIG-150, Ananta Vihar, Pokhariput, P.O./P.S. - Airport, Bhubaneswar, Dist. - Khurda.
2. Prakash Sahu, aged about 45 years, S/o. Narayan Sahu, At/P.O. - Binisapur, P.S. - Niali, Dist. - Cuttack.

... **Opp. Parties.**

Counsel :

For Petitioner -- Shri P.K. Ray & Associates.
For Opp. Parties -- None (Set Ex parte).

Date of argument : 13.10.2014.

Date of judgment : 28.10.2014.

J U D G M E N T

This is an application under section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the Power of Attorney Holder of the petitioner-company praying, inter alia, for an order to take the interim custody of Volkswagen vehicle bearing registration No. OR 02 BX 8935 from opposite party No.1 with assistance of local police pending disposal of arbitration proceeding.

2. Factual matrix leading to the case of the petitioner is that the petitioner-company being licensed by the Reserve Bank of India is involved in the business of providing financial facilities for purchasing / hiring the motor vehicles. The opposite parties approached the petitioner-company to finance for purchase of a Volkswagen vehicle. The proposal was accepted and there was necessary agreement executed between the petitioner-company and the opposite parties. Accordingly, loan was granted and the vehicle was purchased. It was agreed between the parties that in case any dispute arises, it would be referred to the sole Arbitrator and the jurisdiction of any dispute lies in the Courts at Bhubaneswar. First party is the

borrower and second party is the guarantor. It is averred in the petition that the opposite parties failed to discharge their contractual obligations and to avoid the same, they are trying to dispose of the vehicle. Since the petitioner is going to refer the matter to arbitration for settlement of dues of Rs.3,86,497/-, the present petition is filed to pass an order of interim attachment of the vehicle and to restore the same to the petitioner-company, pending disposal of the arbitral proceeding. It is also prayed to pass order to sell the vehicle and any other order as deemed fit and proper.

3. Despite service of notices on the opposite parties and no step being taken by them, the matter is heard ex parte.

4. On going through the loan cum hypothecation agreement, it appears that opposite party No.1 is the applicant whereas opposite party No.2 is the guarantor and the petitioner is the financier. It was agreed between the parties that the opposite parties will pay the borrowed amount and till its repayment, the motor vehicle will remain under hypothecation with the petitioner-company. In the event any dispute arises, the same will be referred to arbitration which will be held at Bhubaneswar. It is found from the said document that Rs.5,50,000/- was credited to the account of the opposite party No.1. The statement of account filed by the petitioner-company

shows that there was outstanding amount of Rs.6,21,262/- against the opposite parties.

5. It is also found from the petition-cum-affidavit of the petitioner-company that the present opposite parties have defaulted in repayment of the loan amount. Since the opposite parties have not preferred to contest the matter and failed to pay the dues as agreed upon, there lies prima facie case in favour of the petitioner. Not only this, but also the balance of convenience lies in favour of the petitioner. If the contractual amount is not paid, definitely there will be loss or injury to the present petitioner so far as breach of contract is concerned.

6. From the foregoing discussions, it is found that all the ingredients of section 9 of the Act have been fulfilled by the petitioner. When the vehicle has been hypothecated, the opposite parties should not sell or dispose of the same. Hence ordered :

O R D E R

The petition under section 9 of the Act is allowed ex parte against the opposite parties with cost. The opposite parties are hereby injuncted from selling or disposing of the hypothecated vehicle and for preservation of the property, its interim custody is given to the petitioner. If necessary, the petitioner may seek the assistance of the concerned police while

taking the interim custody of the said vehicle as per the prayer made in the petition.

**District Judge, Khurda
at Bhubaneswar.**

28.10.2014.

Dictated, corrected by me and pronounced in the open Court this day the 28th October, 2014.

**District Judge, Khurda
at Bhubaneswar.**

28.10.2014.