

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

Present :

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

Dated, Bhubaneswar the 14th Aug. '14.

Arb. (P) No. 199 of 2013.

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

Tata Motor Finance Limited, a Company incorporated under the Companies Act, 1956, having its office at 1st Floor, Keshari Talkies Complex, Unit-3, Kharavela Nagar, Bhubaneswar.

... **Petitioner.**

-V e r s u s-

1. Srikanta Nath, C/o. Sankar Nath, Plot No.LIG-E, At/P.O. – Satyanagar, P.S. – Kharabelanagar, Bhubaneswar - 751 007, Orissa.
2. Sauri Senapati, C/o. Paschima Senapati, Plot No.LIG-E, 2nd Floor, At/P.O. – Satyanagar, P.S. – Kharabelanagar, Bhubaneswar - 751 007, Orissa.

... **Opp. Parties.**

Counsel :

For Petitioner	--	Shri R.C. Panigrahy & Associates.
For Opp. Parties	--	None (Set Ex parte).

Date of argument : 07.08.2014.

Date of judgment : 14.08.2014.

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 petitioner praying for an order of appointment of a Receiver to take possession of a hypothecated commercial vehicle bearing Registration No. OR 02 BR 4752, an injunction restraining the opposite parties from selling, transferring, alienating and/or encumbering the schedule property and for directing the opposite parties to provide security in shape of Bank Guarantee for the amount payable by them.

2. Factual matrix leading to the case of the petitioner is that the petitioner, which is a non-banking financial company incorporated under the provisions of the Companies Act, 1956, being approached by opposite party No.1 advanced a loan of Rs.13,19,000/- in his favour under a Loan cum Hypothecation Agreement dated 19.09.2011 in which opposite party No.2 stood as a guarantor / co-borrower. The loan amount and interest thereon was required to be repaid in 45 EMIs and the agreement has an arbitration clause i.e. Cl.23 with a provision to refer the matter to the Arbitrator in case of any dispute between the parties. As the opposite parties defaulted in making payment of monthly instalments, the dispute was referred for arbitration, which is pending adjudication. Apprehension is raised by the petitioner that the opposite parties would dispose of the hypothecated vehicle as well as their self-acquired properties in order to avoid their obligations under the Agreement. Hence, the petitioner has filed the present application for an interim order, as mentioned earlier.

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

4. Taking through the copy of Loan cum Hypothecation cum Guarantee Agreement filed on behalf of the petitioner, learned counsel appearing for the petitioner has made a forceful contention that unless a Receiver is appointed in respect of the vehicle in question, the opposite parties are restrained from alienating the same in any form and direction is given to provide security for the amount in question, difficulties may arise for realization of the award to be passed in arbitral proceeding. To strengthen his contention, he has relied upon the decisions reported in the case of ***Arun Agencies, Mattancherry Vs. St. Antony's Oil Mill and Ors.*** (AIR 1989 Ker. 312) and ***Appellants : In Re : Haryana Finance Trading Co.*** [1993] 2 CALLT 264 (HC)] (downloaded from manupatra).

5. Cl.18(a) of the Loan cum Hypothecation cum Guarantee Agreement stipulates repossession of the hypothecated assets by the petitioner-company in the event of default in making payment of any part of loan amount on demand. Section 9 of the Act prescribes that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Sec. 36, apply to a Court for an interim measure of protection, as provided therein. In the present case, in spite of efforts made by the petitioner to resolve the dispute, the opposite parties are said to have failed to make payment of the sum in question. Despite sufficiency of service of notices on the opposite

parties, they have failed to enter their appearance and contest the claim. As a result, the claim of the petitioner remains unrebutted and the same finds support from the documents relied upon by him. Therefore, it can be safely concluded that the opposite parties are jointly and severally liable to make payment of the amount claimed by the petitioner and they being required to pay such a high amount, apprehension of the petitioner appears to be genuine and, as such, interim arrangement in respect of the hypothecated vehicle is necessary in the given situation for the interest of justice.

6. Regard being had to the facts and circumstances of the case, in my considered view, it would be just and appropriate to restrain the opposite parties from selling, transferring, alienating and/or encumbering the hypothecated vehicle in question and from selling, disposing or encumbering their movables and immovables.

Further, if the petitioner or his representative is appointed as a Receiver to run the hypothecated vehicle through his representative or hirer and appropriate/adjust the usufructs thereof towards satisfaction of the amount claimed after meeting necessary expenses for running and maintenance of the vehicle, the interest of justice would be best served. Such appointment of Receiver shall stand cancelled in the event the opposite parties furnish security in shape of Bank Guarantee for an amount of Rs.5,90,700/- (Rupees Five Lakhs Ninety Thousand & Seven Hundred).

The petitioner is at liberty to seek the assistance of police while taking over possession of the vehicle as a Receiver after

making an inventory thereof for future reference and his appointment as such shall remain in force till satisfaction of the amount claimed in the case.

7. In the result, to the extent of observations made above, the petition under section 9 of the Act is allowed in part with cost.

**District Judge, Khurda
at Bhubaneswar.**

14.08.2014.

Dictated, corrected by me and pronounced in the open Court this day the 14th August, 2014.

**District Judge, Khurda
at Bhubaneswar.**

14.08.2014.