

of the vehicles in terms of an earlier decision of the High Court in *Kotak Mahindra Prime Ltd.* The Trial Court further directed the Respondent to initiate arbitration proceedings within 90 days, failing which the interim orders would be automatically vacated.

- Aggrieved that the impugned Orders were passed without notice to the Petitioner and without hearing the Petitioner, the Petitioner filed a petition under Article 227 of the Constitution of India, before the High Court.

FINDINGS

- The Petitioner submitted that the possession of the vehicles would bring the Petitioner's business to a complete standstill. The High Court observed that appointment of a receiver to take possession at the ad-interim stage could result in seizure of the buses by the Respondent and bring the Petitioner's business to a grinding halt. Therefore, a high threshold ought to be met for such an extreme measure to be granted.
- The High Court examined whether the Petitioner deliberately intended not to repay the loan- The vehicles involved were luxury buses and possession by the receiver should only have been directed under extraordinary circumstances and if the Petitioner's default could not be made good. In the present case, since no notice was issued, the Trial Court could not have presumed that the Petitioner would not be willing to make the payments especially during the pandemic situation. The Trial Court ought to have issued notice to the Petitioner, afforded a hearing, and then passed appropriate orders in accordance with law
- The High Court observed that while dealing with the application for ad-interim ex-parte relief, the main Section 9 Petitions were disposed of - without calling upon the Petitioner to file a reply and without hearing the Petitioner.
- The High Court held that while the Trial Court has the power to pass orders under Section 9, the Trial Court ought to have considered principles for grant of interlocutory injunctions and appointment of receivers, particularly at the ex-parte stage. Reflecting upon the powers of a court under Section 9 of the Act, the High Court observed as follows:
 - Section 9 petitions cannot be disposed of ex-parte, without giving notice to the Respondent, particularly when coercive orders are being passed.
 - The grant of ex-parte injunctions, ex-parte interim measures or appointment of Receivers at the ex-parte stage would be governed by principles akin to Order XL of the Code of Civil Procedure, 1909 (**CPC**) wherein there has to be imminent apprehension that the property would not be able to be retrieved if notice is issued.
 - The appointment of Receivers at the ex-parte stage in matters such as vehicle loans ought to satisfy the test of imminent threat.
 - The power to pass ad-interim orders under Section 9 of the Act are not in doubt. However, it would be violative of the principles of natural justice to dispose the petitions and direct coercive orders of possession without issuing notice.
 - The standards to be adopted for grant of interim measures under Section 9 of the Act are akin to the standards that are applied for grant of interim injunction under Order XXXIX Rules 1 and 2 of the CPC and for appointment of a receiver under Order XL of the CPC. The disposal of Section 9 Petitions without even hearing the Petitioner is contrary to all settled tenets.
- Relying upon *East India Udyog Limited*, the High Court concurred that the court **cannot dispose of such application ex parte without giving notice to the respondents, but Court can pass ex parte ad interim order pending the application filed under Section 9 of the Act.**
- While the Trial Court relied upon Kotak Mahindra Bank, the High Court distinguished the same. The High Court held that in Kotak Mahindra the respondents were served twice. It was only after the respondents did not appear despite service that the court proceeded ex-parte to direct appointment of receiver. Thus, the High Court held that the Trial Court's reliance upon *Kotak Mahindra Bank* was misplaced.

- The High Court referred to the decision of the Full Bench of the Madras High Court in *Cholamandalam*, wherein the court laid down guidelines to address applications under Section 9 of the Act for seizure of vehicles. In the said case, the court inter alia held that the **application shall not be closed without hearing the other side after notice is served.**

CONCLUSION AND ANALYSIS

- In view of the above, the High Court set aside the impugned Orders under Section 9 of the Act and remanded the matter back to the Commercial Court. Accordingly, the Section 9 Petitions along with all pending applications were disposed of.
- The counsel for the Petitioner submitted that it had no objection if the matter was remanded back to the Trial Court. The Petitioner undertook to make payment of a sum of rupees twenty-five lakhs only, within one week.
- The High Court inter alia directed that
 - The matters shall be heard on merits, after completion of pleadings;
 - If any other instalments were due under the loan agreement, the Trial Court shall pass orders in accordance with law after hearing the Petitioner; and
 - The guidelines laid down in *Cholamandalam* may be followed in case of petitions under Section 9 of the Act relating to vehicle loans.
- In the interest of apprising courts across the country, the High Court directed that its order shall be communicated to the Trial Court and shall be circulated by Registrar Generals to all the District Judges for onward circulation to the judges presiding over commercial courts.

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