

**(2002) 09 CAL CK 0040**

**Calcutta High Court**

**Case No:** APOT No. 635 of 2002, GA No. 3475 of 2002 and AP No. 210 of 2002

Ajoy Kumar Saha

APPELLANT

Vs

Ashok Leyland Finance Ltd.

RESPONDENT

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**Date of Decision:** Sept. 10, 2002

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 9

**Citation:** (2005) 1 CHN 572

**Hon'ble Judges:** Samaresh Banerjea, J; Indira Banerjee, J

**Bench:** Division Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

1. Leave is granted in terms of prayer (a) of the petition.
2. After hearing the parties and considering the application, we are however not inclined to grant any stay because of the view which we are going to take in the present matter.
3. It appears that the appellant who is a hirer in respect of 12 vehicles from the concerned financier being the respondent, made an application u/s 9 of the Arbitration and Conciliation Act, 1996. The contention of the applicant before the Trial Court was that as the hirer was in a very bad financial position, leave may be granted to the appellant to liquidate the outstanding dues by easy monthly instalments.
4. It appears to us that the learned Judge, after hearing the parties, ultimately granted liberty to the appellant to pay up the dues in monthly instalments in accordance with the hire purchase agreement itself which comes around to Rs. 3, 55, 000/- per month with effect from August 31, 2002. The learned Judge further directed that the receiver will take symbolical possession of all the vehicles and under his supervision the appellant will run the vehicles.

5. It may be recorded in this connection that the respondent financier in the Trial Court raised an objection as to the aforesaid joinder of cause of action. It was contended that each of the 12 vehicles is governed by separate agreements and in terms of each of such agreements in case of default the same is entitled to termination and the possession of the vehicle is to be returned back. The learned Judge, however, after hearing the parties was of the view that the joinder of 12 causes of action was permissible and the petitioner could not be at fault on that ground.

6. We are of the view that such joinder of cause of action should not have been permitted under the facts and circumstances of the case. Even if joinder of cause of action be permitted under the provisions of the CPC under certain circumstances. We are of the view under the facts and circumstances of this case such joinder may not be allowed even if it is permissible.

7. In our view the present case is one of such exception where such joinder of cause of action should not have been permitted since each of the vehicle admittedly is governed by separate agreement.

8. In the matter of considering the prayer for interim relief the Court obviously has to take into consideration the provisions of each of such agreement and to find out what is the breach of agreement and also to ascertain what is the amount of actual default in respect of each of such agreement which has not been done in the instant case.

9. Under such circumstances, we are of the view that the appellant should make separate applications u/s 9 of the said Act in respect of each of such vehicle and the Trial Court shall consider each of such application in accordance with law taking into consideration, the particular agreement in respect of the subject vehicle.

10. With such observation as aforesaid we dispose of the appeal and the application after setting aside the order of the Trial Court.

11. The application u/s 9 of the said Act on which the impugned order appealed against was passed also stands dismissed accordingly. We are informed that the respondent has also preferred an appeal against the selfsame order which is also appearing today before us as item No. 22 being APOT 661 of 2002 and GA 3563 of 2002. In view of our order as aforesaid nothing remains in the said appeal and the application and the same has become infructuous. Accordingly, the said appeal treating the same as on the day's list and after dispensing with all formalities and the application are dismissed as infructuous. For a period of fortnight from the date the respondent shall not take any steps for seizure of the vehicles of the appellant on condition that the appellant shall pay without prejudice to the rights and contentions of the parties and subject to the order which will be ultimately passed by the Trial Court a sum of Rs. 3 lakh by 20.9.02. In default of such payment however the interim order will stand vacated.

12. There will be no order as to costs.

13. All parties are to act on a xeroxed certified copy of this Dictated Order on the usual undertaking.