

(2015) 10 BOM CK 0116

In the Bombay High Court

Case No : Arbitration Petition (L) Nos. 1659, 1660, 1661, 1662, 1664, 1666, 1667, 1668, 1669, 1670 and 1671 of 2015

Meru Cab Company Private Limited

APPELLANT

Vs

Sudhir Bhosale and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2015) 10 BOM CK 0116

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Shyam Mehta, Senior Counsel, Zerick Dastur, Prerana Arora and Manswi Nandu i/by J. Sagar Associates, for the Appellant; Shailesh Pathak, for the Respondent

Judgement

R.D. Dhanuka, J.—By these petitions filed under Section 9 of the Arbitration and Conciliation Act 1996 (for short "the Arbitration Act"), the petitioner seeks an order of appointment of a Court Receiver, High Court, Bombay or any other fit or proper person as Receiver with a direction to take possession of the taxi described in prayer clause (b) of the petitions or any equipments installed in the taxi from the respondent and hand over the same to the petitioner and for injunction restraining the respondent from using or operating the said taxi or assigning, selling, transferring, alienating, leasing, licensing and/or creating any third party rights in respect of the said taxi and/or parting with the possession thereof in favour of any person other than the petitioner and/or its representatives. The petitioner also seeks mandatory order and injunction against the respondent to forthwith return the said taxi to the petitioner in good order and good working condition along with its equipments and accessories installed in the taxi. By consent of the parties, all these petitions are heard together and are being disposed of by a common order.

2. Learned counsel for the parties have addressed this Court in the Arbitration

Petition (L) No. 1659 of 2015 as the main matter. I shall thus summarize the facts of the said arbitration petition. There is no dispute that the facts of other arbitration petitions are identical to the facts of Arbitration Petition (L) No. 1659 of 2015.

3. Some time in the month of April 2007, the petitioner introduced its modern, state-of-the-art fleet of air-conditioned radio taxis in Mumbai, branded as "Meru" under a license from the Government of Maharashtra under the Motor Vehicles Act, 1988 and the Fleet Taxi Service Scheme launched in July 2006.

4. On 20th April 2011, the petitioner executed an Agreement with the respondent for plying its taxi bearing no.MH 03 F 9673 and handed over the same to the respondent on the terms and condition mentioned in the said agreement. The said agreement was in English as well as in Hindi language. The respondent has signed both the agreements. Under the said agreement, the respondent agreed to pay a refundable deposit of Rs. 10,000/- upon execution of the said agreement as security for performance of the obligations of the respondent subject to the terms and conditions of the said agreement and agreed to pay a fixed daily subscription amount of Rs. 950/- per calendar day in accordance with the terms and conditions mentioned in the said agreement notwithstanding any events, including festivals and holidays.

5. In Clause 2 of the said agreement, it was provided that the said amount may be increased at the sole discretion of the petitioner by giving one month's written notice to the respondent and the respondent shall pay to the petitioner such increased amount with effect from the date mentioned in the said notice. In clause 1 of the said agreement, it was provided that during the course of the business under the said agreement, the taxi allotted to the respondent may change, due to a variety of reasons and from time to time which change will be documented appropriately with the new allotted taxi number and will be duly signed by both the parties. All terms and conditions will remain same unless otherwise specified.

6. In Clause 4 of the said agreement, it was provided that the said agreement shall commence from the date of execution and shall remain valid for a period of four years from the date of execution, unless terminated earlier in accordance with the Schedule A. Under Clause I (3) of Schedule A, it was provided that the petitioner shall be entitled to revise the subscription amount by such amounts and at such intervals, as the petitioner shall determine in its absolute discretion. Upon payment by the respondent of such additional amount as determined by the petitioner, such additional amount shall be deemed to be "Subscription Amount" as reflected in the said agreement and the provisions of the said agreement shall apply to such amounts in the same manner as applicable to the subscription amount. Under Clause II (2) of Schedule A, it was provided that the petitioner shall be entitled to revise the deposit by such amounts and at such intervals, as the petitioner shall determine in its absolute discretion and shall require the respondent to pay such increased deposit.

7. Clause III of Schedule A provides for obligation of Subscriber. Clause X of Schedule A provides for Term and Termination. Clause XI (2) of Schedule A provides for Arbitration. Under Clause XI (12) that the of Schedule A, it was provided that the subscriber expressly acknowledged and agreed respondent has received, read, understood and accepted the terms and conditions of the said agreement. Under Clause XI (13) of Schedule A, it was provided that the Hindi/ Marathi/ Telugu/Kannada/Urdu translation of the entire text of the said agreement attached at Annexure-3 shall form part of the said agreement. In the event of a variation in the meaning of the English version and the vernacular language version, the English version will prevail. Annexure 2 provides for Fines and Penalties. Category B of Annexure 2 provides for termination of the contract. It is the case of the petitioner that the respondent paid various amounts from time to time to the petitioner under the said agreement before committing defaults.

8. According to the respondent, some time in the month of July 2013, the petitioner had floated a Scheme under which the drivers were given an option to become owners of the taxis after 58 months if they made payment of a deposit amount and paid a subscription amount of Rs. 1060/- per day payable thrice a month out of their customer revenues which they collect from customers while operating the taxi of the petitioner. It is the case of the petitioner that the respondent started making payments on that basis. The petitioner has annexed a copy of the statement of account of the respondent for the period from 16th September 2013 to 14th August 2015 showing various amounts paid by the respondent to the petitioner and payable to the petitioner. As on 14th August 2015, according to the petitioner, the respondent is liable to pay a sum of Rs. 1,30,285.26 to the petitioner in Arbitration Petition (L) No. 1659 of 2015 and other amounts in the remaining petitions.

9. It is the case of the petitioner that since the respondent failed to pay the daily subscription amount to the petitioner since 23rd April 2015 and failed to operate the taxi with effect from 18th March 2015 in accordance with the terms and conditions of the agreement and in view of the respondent having failed to conduct himself as a driver which had resulted loss and damage to the petitioner, the petitioner issued a notice dated 8th June 2015 thereby terminating the said agreement with immediate effect and calling upon the respondent to hand over the said taxi of the petitioner in good condition with all accessories, IT equipment, original parts and tyres and settle any balance dues that he owed to the petitioner in accordance with the terms and conditions of the said agreement. There was no reply to the said notice of termination.

10. It was the case of the petitioner that inspite of the termination of the said agreement by the petitioner and calling upon the respondent to return the taxi forthwith, the respondent continued to use, employ, utilize and engage the taxi owned by the petitioner. The petitioner apprehended that the said taxi which was owned and registered in the name of the petitioner will be misused by the

respondent thereby directly affecting the petitioner.

11. Mr. Mehta, learned senior counsel for the petitioner invited my attention to various provisions of the agreement entered into between the parties and also some of the averments made in the affidavit-in-reply and the sur-rejoinder and submits that the respondent cannot be allowed to ply the said taxi which is owned by the petitioner upon termination of the agreement. He submits that the respondent has illegally disconnected the hardware and GPS installed in the taxi by the petitioner, as a result, the petitioner is unable to trace out the whereabouts of the taxi thereby causing safety and security threats to the passengers plying with the respondent. The petitioner has also filed a criminal complaint against the respondent before the police authorities in Mumbai on 10th June 2015 for illegal possession of the vehicle of the petitioner.

12. Learned senior counsel appearing for the petitioner invited my attention to the brochure annexed to the affidavit-in-reply filed by the respondent giving an offer to the taxi driver to become owner of the vehicle after 58 months on payment of various charges. The respondent had availed of the said scheme and started paying charges @ Rs. 1060/- per day and also made further deposit with the petitioner. He submits that there were no other changes in the terms and conditions of the original agreement. He submits that under the said scheme, the petitioner handed over a new vehicle to the respondent which is described in prayer clauses (a), (b) and (c) of the petition.

13. Learned senior counsel for the petitioner invited my attention to various provisions of the agreement and submits that the petitioner could exercise their rights under the said agreement to take possession of the vehicle from the respondent in view of the termination of the agreement and in view of the respondent not returning such vehicle. It is submitted that the petitioner, however, has chosen to file these proceedings under Section 9 of the Arbitration Act for assistance of this Court in getting possession of the vehicle by appointment of the Court Receiver to obviate any false complaint by the respondent. In support of this submission, the learned senior counsel placed reliance on the following judgments :-

- 1) Charanjit Singh Chadha and Others Vs. Sudhir Mehra, ;
- 2) The Managing Director, Orix Auto Finance (India) Ltd. Vs. Shri Jagminder Singh and Another, ;
- 3) GE Capital Transportation Financial Services Ltd. Vs. Raj Tours Private Limited, and;
- 4) L and T Finance Limited Vs. Saumya Mining Ltd., .

14. Without prejudice to the rights and contentions of the petitioner, learned senior counsel submits that though after adjusting the deposit made by the respondent, the petitioner has to recover substantial amount from each of the respondents, the petitioner is ready and willing to give up its claim against the

respondent in full and final settlement of the claim of the petitioner against the respondent if the respondent hands over the vehicle to the petitioner alongwith equipments in good and working condition forthwith and gives up their alleged claim. Learned counsel for the respondent, however, did not accept this suggestion of the petitioner after obtaining instructions from his clients.

15. Learned counsel for the respondent, on the other hand, submits that the respondent has denied the execution, contents and implementation of the agreement dated 20th April 2011. He submits that no such terms and conditions as set out in the said agreement dated 20th April 2011 were agreed upon between the parties and thus the respondent was not liable to pay the sum of Rs. 950/- per calendar day to the petitioner. He submits that the respondent though had paid the deposit of Rs. 10,000/- to the petitioner and since 2011 has paid Rs. 950/- per day but the same was not under the agreement dated 20th April 2011.

16. It is submitted by the learned counsel for the respondent that on 16th September 2013, the petitioner allotted a new vehicle to the respondent which allotment has no nexus with the alleged agreement dated 20th April 2011. The said new vehicle was allotted to the respondent as per new scheme and new agreement. He submits that the petitioner had suppressed the facts of the agreement dated 16th September 2013 which is in possession of the petitioner and copy of which is not provided to the respondent. He submits that the new arrangement came into existence and operation in view of the petitioner having allotted a new vehicle to the respondent. It is submitted by the learned counsel for the respondent that the petitioner had taken signature of the respondent on various documents without explaining the contents thereof to the respondent. The respondent had signed various documents and blank forms in good faith. He submits that Exhibit A to the petition is in English language and the respondent did not understand the said language and thus the respondent has no knowledge as to the contents of the said agreement. He submits that though there is also one Hindi format attached to the said agreement which bears the signatures of the respondent, the said Hindi format was signed by the respondent in hurry and without giving an opportunity by the petitioner to read the said Hindi format.

17. It is submitted that under the said new agreement, the respondent had option to purchase the vehicle by paying Rs. 1060/- per day which the respondent had paid to the petitioner. He submits that there is no clause for arbitration in the new agreement and thus the petition is not maintainable.

18. Learned counsel for the respondent then submits that the petitioner has committed a fraud upon the respondent by obtaining the signature of the respondent and not signing the said purported agreement. He submits that the agreement dated 20th April 2011 was in respect of the taxi bearing no.MH 03 F 9673 which taxi is not in possession of the respondent. He submits that there is no document in existence in respect of the taxi bearing no.MH 01 JA 5800. It is submitted that since the agreement relied upon by the respondent refers to

different taxi, no claim is made out by the petitioner in respect of the different taxi in this petition. In support of this submission, learned counsel for the respondent placed reliance on the judgments of the Delhi High Court in the cases of Navbharat Ferro Alloys Ltd. Vs. M/s. Continental Float Glass Ltd., and Parmali Wallace Limited Vs. Union of India, .

19. The learned counsel for the respondent submits that under Clause XI (2) of Schedule A of the agreement, the petitioner in any event can refer the dispute to arbitration which occurred only in terms of the said agreement and cannot refer the dispute to arbitration now which is raised after termination of the agreement. He submits that in any event, since the said agreement has been terminated, the clause in respect of the arbitration does not survive. Learned counsel for the respondent submits that though the respondent understands Hindi, the respondent has not understood the effect and implication of the said agreement, the said agreement is not binding upon the respondent and thus no reliance upon the said agreement can be placed by the respondent and no relief under Section 9 of the Arbitration Act can be granted on that ground itself.

20. In so far as the Arbitration Petition (L) No. 1666 of 2015 is concerned, the learned counsel for the respondent invited my attention to the termination notice dated 16th July 2015 which refers to clauses 77 and 78 of the agreement and submits that there are no such clauses in the agreement referred to and relied upon by the petitioner. He submits that the notice of termination itself is bad and illegal. In so far as the Arbitration Petition (L) No. 1660 of 2015 is concerned, it is submitted by the learned counsel that the said agreement was only for a period of two years with effect from 6th July 2013 and the said agreement has come to an end on 6th July 2015. In the notice of termination dated 16th July 2015, the petitioner has once again referred to clauses 73 and 74 of the agreement which clauses do not exist. In so far as the Arbitration Petition (L) No. 1662 of 2015 is concerned, he submits that the respondent has already lodged FIR against the petitioner for making an attempt to take forcible possession of the vehicle. In so far as the Arbitration Petition (L) No. 1667 of 2015 is concerned, he submits that even the said agreement was only for a period of two years with effect from 6th March 2013 which period expired much prior to the date of the petitioner filing the said arbitration petition.

21. Mr. Mehta, learned senior counsel appearing for the petitioner in rejoinder submits that the case of the respondent in the affidavit-in-reply and sur-rejoinder is totally inconsistent. He submits that in the affidavit-in-reply, the respondent has denied the existence of the agreement dated 20th April 2011 in toto and has alleged not to have executed the agreement with the petitioner at all. He submits that however, in the affidavit-in-reply and in sur-rejoinder, the respondent has referred to the alleged agreement in respect of the new vehicle allotted to the respondent on 16th September 2013. The respondent has filed a false affidavit in this Court. It is submitted by the learned senior counsel that the respondent has not disputed that the respondent was allotted a new vehicle and

was paying a sum of Rs. 1060/- per day to the petitioner.

22. It is submitted that under clause I of the said agreement dated 20th April 2011, the parties had agreed that the taxi allotted to the respondent may change due to a variety of reasons from time to time. All the terms and conditions will remain same unless the same are otherwise specified. He submits that under the said agreement, the petitioner was entitled to retake physical possession of the vehicle upon termination of the agreement. The respondent cannot be allowed to use or operate the said taxi under the said agreement upon such termination. The respondent is also liable to pay penalty of Rs. 10,000/- every week for such continued use and occupation of the taxi till it is returned to the petitioner.

23. It is submitted by the learned senior counsel that even if the said agreement is terminated, the arbitration clause recorded in the agreement thereof has not come to an end. He submits that the petitioner is entitled to make any claim which have arisen during the existence of the agreement and even thereafter under the terms and conditions of the said agreement. He submits that the respondent had also signed the document in Hindi and had confirmed and acknowledged that he had received, read and understood and accepted the terms and conditions of the agreement.

24. Learned senior counsel for the petitioner submits that since the respondent has refused to pay any amount and/or return the taxi to the petitioner, the Court Receiver shall be appointed in respect thereof with a direction to hand over the said taxi to the petitioner. He submits that since the said vehicle has been painted with the name and brand of the petitioner, the respondent cannot be allowed to use the said taxi. The learned counsel appearing for the respondent states that his clients are not agreeable to act as agents of the Court Receiver and pay royalty or on any other conditions.

REASONS AND CONCLUSIONS:-

25. A perusal of the record indicates that the respondent had signed the agreement dated 20th April 2011 which was in English as well as in Hindi language. It is not in dispute that the respondent had deposited a sum of Rs. 10,000/- under the said agreement and had been paying a sum of Rs. 950/- per day as daily subscription to the petitioner. The respondent, however, in the affidavit-in-reply has denied the existence as well as the signature on the said document. The learned counsel for the respondent contended that though the respondent had signed the said agreement dated 20th April 2011 he was not being familiar with English language he had not understood the effect and implication of the said agreement. The respondent in the sur-rejoinder has also denied his knowledge about Hindi language.

26. A perusal of the affidavit-in-reply and the sur-rejoinder clearly indicates that there are several contradictions and inconsistencies. In clause XI (12) of Schedule A, it was provided that the subscriber had acknowledged and agreed that respondent has received, read, understood and accepted the terms and

conditions of the said agreement. In Clause XI (13) of Schedule A, it was provided that the entire text of the said agreement attached at Annexure-3 shall form part of the said agreement. In the event of variation in the meaning of the English version and the vernacular version, the English version will prevail. It is not in dispute that the respondent had acted upon the said agreement and had paid deposit amount of Rs. 10,000/- and daily subscription amount of Rs. 950/- per day for quite some time.

27. In so far as the submission of the learned counsel for the respondent that the said payment made by the respondent @ Rs. 950/- per day was not under the said agreement dated 20th April 2011 but was under some other agreement is concerned, the respondent could not produce any other agreement for perusal of this Court. The respondent themselves in their affidavit-in-reply placed reliance on the scheme introduced by the petitioner by which all the drivers who had signed agreements with the petitioner were offered the ownership of the vehicle after expiry of 58 months provided they had made payment of Rs. 1060/- per day and the amount of Rs. 40,000/- at the time of purchase of the said vehicle. The respondent was also given a new vehicle by the petitioner. It is not in dispute that the respondent was paying to the petitioner a sum of Rs. 1060/- per day for quite some time. The respondent in the affidavit-in-reply and in the sur-rejoinder had taken a contradictory stand i.e. on one hand, the respondent is raising a plea that the parties had entered into another agreement under which the respondent was paying the sum of Rs. 1060/- per day and at the same time also raises a plea that there was no agreement entered into between the parties. The case of the petitioner is that there is no agreement other than the agreement entered into between the parties on 20th April 2011.

28. A perusal of clause 1 of the said agreement dated 20th April 2011 clearly indicates that the petitioner could change the type of taxi allotted to the respondent due to variety of reasons from time to time. It was provided that the said change would be documented appropriately with the new allotted taxi number and duly signed by both the parties. All the terms and conditions will remain the same unless and otherwise specified. It is not in dispute that the respondent was allotted a new vehicle by the petitioner. It is also not in dispute that the respondent started paying the amount of Rs. 1060/- per day to the petitioner. In addition to Rs. 10,000/-, the respondent deposited further amount with the petitioner. In clause I (3) of Schedule A of the said agreement, it was provided that the petitioner shall be entitled to revise the subscription amount by such amounts and at such intervals as the petitioner shall determine in its absolute discretion. In clause III (1) of Schedule A, the respondent had to pay all monies to the petitioner as per the agreement without deduction or set off in the manner contemplated in the agreement.

29. In so far as the submission of the learned counsel for the respondent that in view of the termination of the agreement dated 20th April 2011, the petitioner could not invoke the arbitration agreement is concerned, in my view, there is no

merit in this submission of the learned counsel for the respondent. Even upon termination of the agreement which contains arbitration agreement, in my view, the arbitration agreement would not perish along with the main agreement and it will survive.

30. In so far as the submission of the learned counsel for the respondent that the petitioner could not invoke the arbitration in respect of their claim after termination of the contract is concerned, in my view, there is no merit in this submission of the learned counsel for the respondent. A perusal of the arbitration clause recorded in clause XI (2) of Schedule A of the agreement clearly indicates that the said clause is very wide and the dispute under the said agreement can be raised even after the termination of the contract. In my view, Mr. Mehta, learned senior counsel for the petitioner is right in his submission that the dispute which had already arisen during the tenure of the said agreement can always be made even after termination of the agreement.

31. In so far as the plea of the respondent that the so called arbitration agreement or the main agreement would not be binding on the respondent in view of the respondent not having understood the effect or implication of such agreement is concerned, in my view, this submission is totally devoid of merits. The respondent has acted upon the said agreement which was not only in English language but also in vernacular language which the respondent could understand. The respondent never raised any such dispute during the existence of the said agreement between the parties. This plea is also not raised in any of the pleadings raised by the respondent. In my view, such a plea cannot be allowed to be raised at this stage. The parties had executed commercial document and thus cannot be allowed to resile from such agreement subsequently on the ground that the parties allegedly did not understand the contents or implication of the said agreement.

32. In so far as the submission of the learned counsel for the respondent that the petitioner had committed a fraud upon the respondent is concerned, the said plea is devoid of any particulars and basis.

33. In so far as the submission of the learned counsel for the respondent that relief which is sought in respect of the taxi numbers described in prayers of the arbitration petition which are different than the taxi numbers mentioned in the agreement and thus no such relief can be granted on that ground is concerned, in my view, this plea is thoroughly misconceived and frivolous. Clause I of the agreement clearly provided that the petitioner could allot different taxis due to various reasons. The petitioner had allotted a new vehicle to the respondent who availed of the said facility and had been paying to the petitioner daily subscription of Rs. 1060/- till he started committing default. The other terms and conditions of the said agreement therefore, did not change except the taxi number and the amount.

34. In so far as the submission of the learned counsel for the respondent made

in Arbitration Petition (L) No. 1666 of 2015 is concerned, in my view, Mr. Mehta, learned senior counsel for the petitioner is right in his submission that the petitioner has not incorporated any clauses of the agreement in the letter of termination and the said numbers mentioned as 77 and 78 were obviously a typographical error and no benefit can be taken by the respondent of such typing error.

35. In so far as the submission of the learned counsel for the respondent made in Arbitration Petition (L) Nos. 1660 of 2015 and 1667 of 2015 that the contract was only for a period of two years and had already expired much prior to the date of filing of the petition and thus no relief can be granted is concerned, this submission of the respondent is also without any merit and is untenable. The fact remains that though the contractual period had expired, the respondent had not returned the vehicle to the petitioner and has prima facie illegally retained the said vehicle with him.

36. In my prima facie view, the petitioner has rightly terminated the agreement in view of the respondent committing breach of the terms and conditions of the contract and even in view of the respondent committing the default specified in Annexure 2. Annexure 2 provides for Fines and Penalties in case of breaches and further provides for termination of the contract on various grounds. It is not disputed by the respondent that the respondent has not paid any daily subscription fees to the petitioner since 23rd April 2015.

37. A perusal of clauses X (5) & (6) of Schedule A of the said agreement clearly indicates that the respondent upon termination of the agreement was liable to pay to the petitioner all arrears of subscription then due and all other sums accrued, due and unpaid at the date of termination, together with interest etc. In clause X (8) of Schedule A of the agreement, it was provided that the respondent shall no longer be allowed to use or operate the taxi and shall forthwith return the taxi in good order and in good working condition along with all equipments and accessories fitted therein etc. to the petitioner. In clause X (9) of Schedule A of the agreement, it was provided that the petitioner is entitled to retake possession of the taxi and for such purpose, shall enter upon any premises belonging to or in the occupation or control of the respondent which right is without prejudice to the other rights provided in the contract.

38. Under Clause X (10) of Schedule A of the agreement, the respondent has also agreed to pay a sum of Rs. 10,000/- every week in the form of arrears till the respondent not returning the taxi and continuing the use of the said taxi. The petitioner has substantial claim against the respondent in view of the respondent having not returned the taxi and also not having paid various amounts. Though without prejudice to the rights and contentions of the petitioner to retake the possession of the vehicle and recover various amount of daily subscription and penalties etc from the respondent, the petitioner had offered to give up the entire money claim after adjusting the amount of deposit lying with the petitioner if the respondent would have returned the vehicle in good condition to the

petitioner. Though the matter was adjourned twice, the respondent did not agree to the said suggestion of the petitioner.

39. Though under the provisions of the agreement entered into between the parties, the petitioner is entitled to retake possession of the vehicle as held by the Supreme Court in the cases of Charanjit Singh Chadha and Ors. (supra) and Orix Auto Finance (India) Ltd.(supra) and by Delhi High Court in the case of Ge Capital Transportation Financial Services Ltd. (supra), the petitioner has filed the present proceedings for seeking assistance of this Court by praying for interim measures for appointment of a Court Receiver with a view to obviate any frivolous complaint by the respondent. Learned counsel for the respondent, on instructions, states that his clients in aforesaid petitions are not willing to act as agents of the Court Receiver. It is not in dispute that the vehicles provided to each of the respondents by the petitioner are painted with the name and brand of the petitioner "Meru."

40. This Court has already granted ad-interim injunction against the respondents in terms of prayer clause (c). I am inclined to accept the submission of the learned counsel for the petitioner that this is a fit case for appointment of a Court Receiver in respect of all the vehicles with a direction to take forcible possession of the vehicles from the respondents and to hand over the same to the petitioner as agent of the receiver without payment of royalty and security. In my prima facie view, the respondent has no right to possess the said vehicles after termination of the agreement by the petitioner in view of various breaches committed by the respondents. The petitioner has availed of loans on all these vehicles and admittedly such vehicles are owned by the respondents. The respondents in each of the matters have stopped paying daily subscription to the petitioner since April 2015 and have been using the said vehicles illegally.

41. In so far as the judgments of the Delhi High Court in the cases of Navbharat Ferro Alloys Ltd. (supra) and M/s. Parmali Wallace Ltd. (supra) relied upon by the learned counsel for the respondent are concerned, the reliance placed on both the judgments is totally misconceived. None of these judgments are at all applicable to the facts of this case even remotely.

42. This Court in the case of L & T Finance Limited Vs. M/s. Saumya Mining Ltd. (supra) has considered the similar situation where the respondent had committed default in making payment and outstanding dues and was in possession of the hypothecated assets of the petitioner and has appointed Court Receiver in respect of such equipments with a direction to appoint the respondent as an agent of the Court Receiver. It was made clear that if the respondent does not accept the agency of the Court Receiver within the time prescribed on payment of royalty and furnishing security, the Court Receiver shall take forcible possession. In this case, the respondents in all these petitions through their learned counsel have stated that they are not interested in becoming agents of the Court Receiver and pay royalty or security charges. The said judgment of this Court in the case of L & T Finance Limited Vs. M/s. Saumya

Mining Ltd.(supra) squarely applies to the facts of this case. I am thus inclined to accept the submission of the learned senior counsel for the petitioner that the Court Receiver shall be directed to take forcible possession of the vehicles from the respondents and if necessary, with the assistance of the police and to hand over the same to the petitioner as an agent of the Court Receiver without payment of royalty and security which shall be subject to the final outcome of the arbitral proceedings.

43. I therefore pass the following order :-

(a) The Court Receiver, High Court, Bombay is appointed as a Receiver of the taxis bearing numbers mentioned in prayer clause (b) of the arbitration petitions and any equipments installed in the taxi from the respondents or anybody else found in possession of such vehicles with police assistance, if required and to hand over the same to the petitioner as an agent without payment of royalty and security;

(b) Handing over the possession of the vehicles to the petitioner will be subject to the final outcome of the arbitral proceedings;

(c) The respondent in each of the petitions is directed to disclose the exact location of the vehicle to the Court Receiver within one week from today;

(d) Till the Court Receiver takes possession of the vehicle from the respondents, ad-interim order passed by this Court in terms of prayer clause (c) to continue;

(e) The petitioner is directed to take steps for appointment of an arbitrator expeditiously;

(f) All the arbitration petitions are disposed of in aforesaid terms;

(g) There shall be no order as to costs.

(h) Parties as well as the Court Receiver to act on an authenticated copy of this order.

44. Oral application of the learned counsel for the respondent for stay of the operation of this order is rejected.