

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 21st DAY OF JANUARY 2016

THE HON'BLE MR. JUSTICE S.MANIKUMAR

A.NO.1942 OF 2015

In the matter of Arbitration
And Conciliation Act 1996
and

In The Matter of Disputes
Between Cholamadam
Investment and Finance
Company Ltd. And Mr.Saroja
Kumar Behera Arising under
Loan Agreement
No.XVFPBNR00000664102 Dated
26.11.2011

M/s.Cholamadam Investment
and Finance Company Limited
'Dare House' No.2 N.S.C.Bose Road
Parrys
Chennai-600 001
Represented by its Authorised Signatory

... Applicant

-Versus-

1.Mr.Saroja Kumar Behera (Deceased)
S/o.Muralidhara Behera
AT/PO Kantilo, PS Khandapada
Gania, Nayagarh, (Near Khandesun Temple)
Khandaparagarh, Orissa-752 078

*** 2.Mrs.Pramsdini Behera**
W/o Muralidhara Behera
AT/PO Kantilo, PS Khandapada
Gania, Nayagarh, (Near Khandesun Temple)
Khandaparagarh, Orissa-752 078
(2nd Respondent brought on record
as legal heirs of the deceased
Responded as per order dated
21/08/2015 in A.no.4681 of 2015.)

Application praying that this Hon'ble Court be please to appoint an Advocate Commissioner to seize and deliver the vehicle to applicant which is more fully described in the schedule to the judges summons which is lying in the custody of respondent or his men, agents, servants from his premises at AT/PO Kantilo, PS Khandapada, Gania, Nayagarh, (Near Khandesn Temple), Khandaparagarh, Orissa-752 078 or wherever found with Police aid and break open of premises if necessary and pass such other order or orders as may deem fit and proper in the circumstances of the case.

This application coming on this day before this court for hearing court made the following order:

Material on record discloses that on the dispute between the applicant and the respondent, an ex-parte Award dated 06.01.2015, in D. No. 104 of 2013, has been passed. Enclosing the same in the typeset of papers and invoking Section 9 of the Arbitration and Conciliation Act, 1996, the present Application No. 1942 of 2015 has been filed, for appointment of an Advocate Commissioner to seize and repossess the vehicle.

2. Record of proceedings would show that on 17.03.2015, this Court has appointed an Advocate Commissioner. On 23.09.2015, when the matter came up for hearing, after recording the submission of the learned counsel appearing for the respondent/borrower, this Court has passed the following order:-

" Learned counsel appearing for the respondent submits that the respondent is willing to settle the dispute as per the award passed in favour of the applicant, however, he needs sometime. Post the matter after six weeks. In the meantime, the applicant is directed not to dispose of the vehicle. It is open to the respondent to approach the applicant in the meantime and negotiate for settling the matter.

2. The Advocate Commissioner has filed a report stating that in pursuant to the warrant issued by this Court, he seized the vehicle and handed over the same to the applicant. He has further sought for additional remuneration.

3. Considering the report filed by the Advocate Commissioner and also a memo seeking additional remuneration, this Court is of the view that he is entitled to get an additional remuneration of Rs.20,000/-.

Accordingly, the applicant is directed to

pay a sum of Rs.20,000/- (Rupees twenty thousand only) as additional remuneration to the Advocate Commissioner within seven days from today."

Thereafter the matter is listed today.

3. Added further, Mr. N. Santhosh Nagarajan, learned counsel for the applicant submitted that though the borrower is aware of the Award dated 06.01.2015, the same has not been challenged. The respondent/ borrower has not approached the Finance Company for settlement or payment. Submission of the learned counsel for the applicant is placed on record.

4. Today, there is no representation for the respondent/ borrower. In as much as, the award remains unchallenged and cannot be challenged at this juncture, beyond the period provided for and since there is no opposition to the submission of the learned counsel for the applicant that within the time provided for, the borrower, has not approached the Finance company for settlement, no purpose would be served in keeping the Application pending.

5. In view of the above, the Application is closed. It is open to the Finance Company to proceed further, in accordance with law. Learned Advocate Commissioner shall stand discharged.

sd/.S.M.K.J

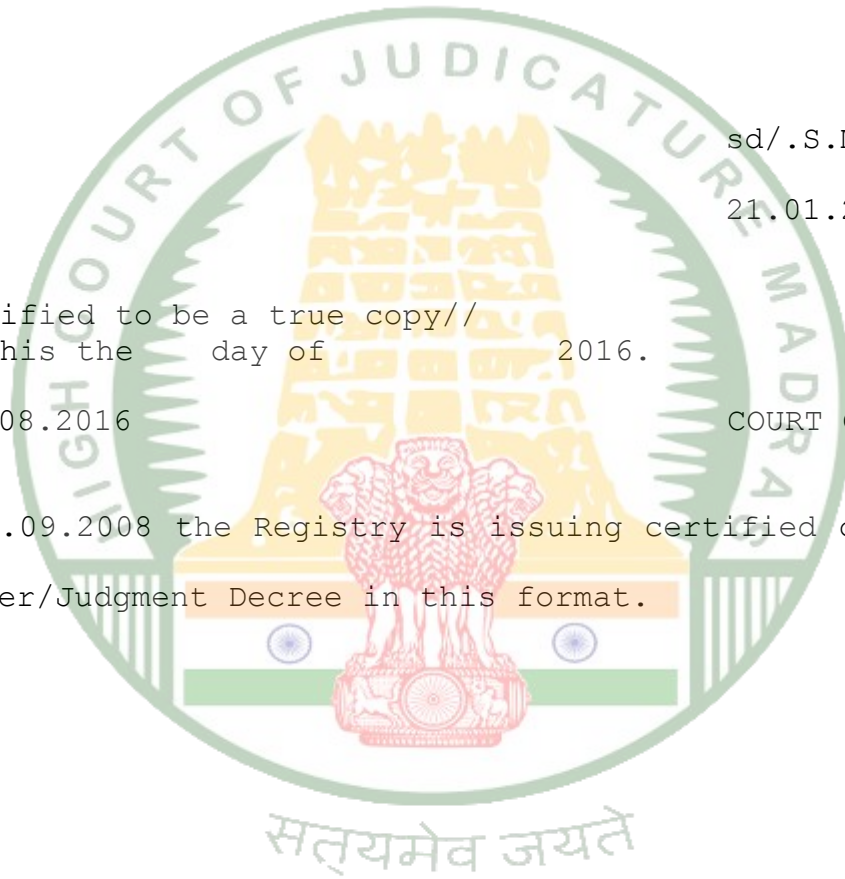
21.01.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/09.08.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



WEB COPY