

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 27TH DAY OF FEBRUARY 2017

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

A. No.2403 of 2016

In the matter of
Arbitration & Conciliation
Act, 1996

And

In the matter of Disputes
between M/s.Cholamandalam
Investment and Finance
Company Ltd. and Mrs.Nisha S
Arising under Loan Agreement
No. XVFPKLM00000842343 Dated
31.10.2012

M/s.Cholamandalam Investment and Finance Company Limited
'Dare House', No.2, N.S.C.Bose Road,
Parrys,
Chennai - 600 001

Represented by its Authorised Signatory : Applicant

Vs.

Mrs.Nisha S.
W/o.Saju G
Padmaragam, Maravoorumuri,
East Kallada, Kollam,
'Kerala 691 502

: Respondent

Application praying that this Hon'ble Court be pleased
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 her men, agents, servants from her

premises at Padmaragam, Maravoorumuri, East Kallada, Kollam, 'Kerala 691 502 or wherever found with Police aid and break open of premises if necessary.

This application coming on this day before this court for hearing in the presence of Mr.D.Pradeep Kumar Advocate for the Applicant herein, and Mr.P.Palaninathan, advocate for the respondent herein and upon reading the order herein dated 24.08.2016.

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

This application has been filed to appoint an Advocate Commissioner to seize and deliver the vehicle to the applicant.

2.The vehicle in question was purchased by the respondent by availing financial assistance from the applicant/Finance Company to the tune of Rs.14,89,754/- repayable in 59 instalments, the first of which instalment commenced on 01.12.2012 and the amount to be paid was Rs.25,250/- while the last instalment falls due on 01.10.2017, the amount to be paid being Rs.25,254/-. The respondent/borrower had paid 32.98 instalments out of 41 instalments and still 8.02 instalments remain unpaid.

3.Earlier, this Court, by order dated 10.02.2017, had directed the vehicle to be returned to the respondent on

payment of Rs.2 lakhs and the Demand Draft, for the said sum, was also handed over to the applicant/Finance Company across the Court. Against the said order, the applicant/Finance Company preferred an appeal before the Honourable First Bench in O.S.A. NO. 15 of 2017, which was disposed of by judgment dated 02.02.2017 directing the applicant/Finance Company to move the learned Single Judge. Accordingly, the parties are before this Court once again.

4. On earlier occasions, twice, the matter was adjourned so that a viable settlement proposal could be given by the respondent. However, it appears that the matter is being dragged on indefinitely. Hence, this Court is not inclined to keep this application pending any further. However, the learned counsel for the applicant submits that already, they have nominated an Arbitrator, who has entered upon reference and the applicant has also filed their claim statement.

5. Learned counsel for the respondent submits that the respondent has not received any notice from the learned Arbitrator.

6. In the light of the above facts and circumstances, the learned Arbitrator is directed to issue fresh notice to the respondent to be served on the counsel for the

respondent appearing in these proceedings fixing the first date of hearing within 15 days from today.

7. Before the learned Arbitrator, the respondent shall give a fresh proposal as to how she intends to liquidate the balance dues and the applicant/Finance Company shall be heard in the matter and the learned Arbitrator shall endeavour to bring about an amicable settlement.

8. Till then, the Demand Draft for Rs.2 lakhs, handed over to the applicant, shall not be encashed by the applicant/Finance Company and the vehicle shall not be alienated. It is needless to state that if nothing fruitful happens before the learned Arbitrator, it is left to the applicant to invoke the terms of the agreement.

9. The application is disposed of accordingly.

Sd/T.S.S.J

27.02.2017

//Certified to be a true copy//

Dated this the day of 2017

S.s/02.03.2017

COURT OFFICER

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