

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Application No.5669 of 2018

M/s.Cholamandalam Investment
& Finance Co. Ltd.,

Represented by its Authorised Signatory,
“Parry House”, No.2, N.S.C.Bose Road,
Parrys, Chennai - 600 001.

.... Applicant

versus

Kewal Krishna Sen,
Tamoliyan Ka Mohalla,
Toda Rai Singh, Tonk,
Rajasthan - 304 505.

.... Respondent

Prayer: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii)(a)(b)(c)(d) & (e) of the Arbitration and Conciliation Act, 1996, to appoint the employee of the applicant viz. Mr.Ajay Singh Bhati, Branch Business Manager, as Receiver to seize and take possession of the vehicle, which is more fully described in the schedule to the Judges Summons, which is lying in the custody of respondent's men, servants, agents, from his premises at Tamoliyan Ka Mohalla, Toda Rai Singh, Tonk, Rajasthan – 304 505 or wherever found with Police aid and break open the premises, if necessary.

For Applicant : M/s.L.F.Shika

ORDER

This application has been filed seeking a direction to appoint the employee of the applicant viz. Mr.Ajay Singh Bhati, Branch Business Manager, as Receiver to seize and take possession of the vehicle, which is more fully described in the schedule to the Judges Summons, which is lying in the custody of respondent's men, servants, agents, from his premises at Tamoliyan Ka Mohalla, Toda Rai Singh, Tonk, Rajasthan - 304 505 or wherever found with Police aid and break open the premises, if necessary.

2. The respondent availed of loan from the applicant for purchase of vehicle and executed a loan agreement No.XSHUTNK00002212519 dated 22.12.2017, for a sum of Rs.9,50,000/- to be paid in 42 monthly installments and the first installment commenced from 25.01.2018 and the re-payments were to run till 25.06.2021. As on 19.07.2018, a sum of Rs.10,83,085.99 is due and payable by the respondent. In terms of the loan agreement executed by the respondent, the applicant is entitled to re-possess the vehicle in the event of default committed by the respondent. It is submitted that the continued use of the vehicle by the respondent would depreciate its value.

3. Notice sent to the respondent has been returned and an affidavit of service is also filed enclosing returned cover. Though the name of the respondent is printed in the cause list, there is no representation for him either in person or through counsel.

4. Upon considering the facts and circumstances of the case, this Court is satisfied that the applicant has made out a *prima facie* case in its favour and accordingly, to appoint employee of the applicant viz. Mr. Ajay Singh Bhati, Branch Business Manager, as Receiver to seize and take possession of the vehicle, which is more fully described in the schedule to the Judges Summons, which is lying in the custody of respondent or respondent's men, agents, servants from respondent premises or wherever found with Police aid and break open the premises, if necessary of the applicant is appointed as Receiver to take custody of the vehicle. The receiver will be entitled to take possession of the vehicle from the respondent or its agent or any one in possession thereof. If necessary, the Receiver shall get police assistance and the Station House Officer of the concerned Police Station, within whose jurisdiction the vehicle is found, will render requisite assistance for this purpose. This Order shall operate only for a period of six weeks from the date of receipt of a copy of this Order.

N.SATHISH KUMAR, J.

sri

5. As the learned counsel for the applicant would submit that an award of arbitration between the applicant and the respondent has been passed on 15.10.2018, the Receiver shall preserve the vehicle without alienating or encumbering thereof till orders are passed by this Court in this application. However, in case the respondent make payment of the outstanding installments, the Receiver shall release the vehicle to the respondent. It is open to the applicant to work out his remedy by enforcing the award as per law.

6. With the above direction, this application is closed.

30.07.2020

sri

The counsel for the applicant is permitted to receive the certified copy of the order of the Receiver and communicate the same to the Receiver.

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