

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Application No.9353 of 2019

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

versus

M/s.OTA Kandla Private Limited,
P.No.640, Ward 12 C, Lilashah Nagar,
Gandhidham, Kutch,
Gujarat - 370 201.

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Respondent

Prayer: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii)(a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996, to appoint employee of the applicant viz. Mr.Dharmendrasinh Jadeja, Branch Legal Manager, as Receiver to seize and take possession of the construction equipment, 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.

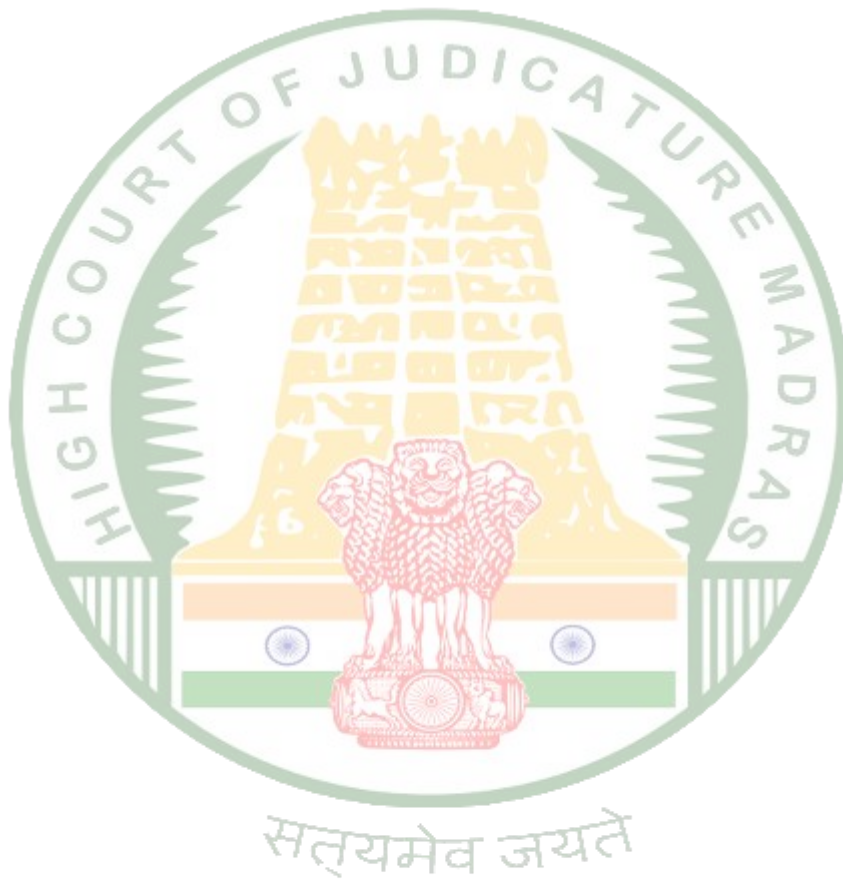
For Applicant : Mr.D.Pradeep Kumar

For Respondent : No Appearance

ORDER

This application has been filed by the applicant, seeking a direction to appoint employee of the applicant viz. Mr.Dharmendrasinh Jadeja, Branch Legal Manager, as Receiver to seize and take possession of the construction equipment, 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.

2. The respondent availed of loan from the applicant for purchase of construction equipment and executed a loan agreement No.X0CEGDM00001940592 dated 25.03.2017, for a sum of Rs.53,20,000/- to be paid in 48 monthly installments and the first installment commenced from 25.04.2017 and the re-payments were to run till 25.03.2021. As on 12.11.2019, a sum of Rs.28,36,599.95 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 construction equipment in the event of default committed by the respondent. It is submitted that the continued use of the construction equipment by the respondent would depreciate its value.



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3. Notice sent to the respondent has been served and affidavit of service is also filed to that effect. 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, employee of the applicant viz. Mr.Dharmendrasinh Jadeja, Branch Legal Manager, is appointed as Receiver to take custody of the construction equipment. The receiver will be entitled to take possession of the construction equipment 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 construction equipment is found, will render requisite assistance for this purpose.

N.SATHISH KUMAR, J.

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5. The agreement entered into between the applicant and the respondent provides for arbitration in the event of disputes and differences between the parties. It is submitted by the learned counsel for the applicant that proceedings for arbitration have been initiated and are pending in Arbitration case. The Receiver shall preserve the construction equipment without alienating or encumbering thereof till the arbitration proceedings are concluded. However, in case the respondent makes payment of the outstanding installments, the Receiver shall release the construction equipment to the respondent. The receiver shall seize the construction equipment within a period of six(6) weeks from the date of receipt of a copy of this order.

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

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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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