IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.1402 of 2021

M/.TVS Credit Services Ltd.,
having its registered Office at:
No.29, III Floor, Jayalakshmi Estates,
Haddows Road, Nungambakkam,
Chennai,
Represented by its Assistant Manager Legal,
Mrs.Shanthi G.K ... applicant

Vs.

Joshua K.R ... respondent

Prayer: Judges summons filed under Order XIV Rule 8 of O.S. Rules R/w Section 9 (ii) (d) & (e) of the Arbitration and Conciliation Act, 1996 to appoint Mr.Ruban K.N, working as Deputy Manager Legal of the applicant to seize and deliver the vehicle Toyota Fortuner 3.OL 2WD AT 4X2 Diesel 2013 bearing Registration No.TN21AQ5455, Chassis No.MBJ11JV6104019458-0813, Engine NO.1KDU382114 available at the respondent's premises or wherever found and permit the receiver namely Mr.Ruban K.N. of the applicant to obtain police and and to break open the premises.

For Applicant : Mr.M.Arunachalam

ORDER

This application is filed for appointing a Receiver to seize the vehicle which is the subject matter of a loan agreement between the applicant and the respondent herein.

2. It is the case of the applicant that they had extended financial facility to the respondent for purchasing a Toyota Fortuner to the tune of Rs.11,89,500/-. The above sum together with interest @ 18.5% per annum was required to be re-paid in 60 equated monthly instalments of a sum of Rs.30,530/- each. The E.M.Is were to commence from 07.07.2018 and the last of which was due on 07.06.2023.

3. As per the terms of the agreement, the respondent was required to pay the equated monthly instalments without any demand being made for the same. The respondent, who was to have paid 20 instalments, which is prior to the lockdown, had, only paid around 17

instalments and thereafter, there has been no payment. The applicant has also given a moratorium of 6 months, which was available to the respondent from March to August 2020 and the tenure of the agreement was extended from 60 to 67 months. Even after such extension, the respondent has only paid 20 instalments and committed default thereafter. The last of the payment was made only on 07.05.2020, that too, a sum of Rs.31,000/-. From 07.09.2020, there has been a default. The applicant has also recalled the loan and has also issued notice to the respondent. However, the respondent has neither come forward to pay the money and regularise the outstanding nor request for re-scheduling of the loan payment. Although the agreement contains a Clause that the applicant can re-possess the vehicle, however, they are unable to do so. Hence, considering the fact that the parties have agreed to resolve the disputes through Arbitration, the applicant is before this Court by way of Section 9 application to secure the subject matter of the Agreement.

4. Having perused the papers and taking into account the fact that the respondent has been in default even prior to the lockdown and has

continued with default, the respondent shall be permitted to seize the vehicle under the contract, for which purpose, the Court appoints Mr.Ruban K.N, the Deputy Manager Legal of the applicant's branch as Receiver. The Receiver shall effect the seizure within a period of 6 weeks from the date of receipt of the order. He shall also be given such assistance as required by the Station Officer of the jurisdictional police station for effecting the seizure.

5. The respondent shall initiate arbitral proceedings within a period of 60 days from today. The vehicle shall not be sold without reference to this Court or till the arbitration proceedings is concluded.

6. The Application is ordered accordingly. No costs.

29.03.2021

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
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P.T. ASHA. J,

srn

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