

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.1512 of 2021

M/s.Daimler Financial Services India Pvt. Ltd.,
Represented by its Authorised Signatory
1st Floor, Unit # 1, Block B – Tek Meadows Campus,
No.51, Rajiv Gandhi Salai,
Sholinganallur, OMR, Chennai - 600119 ... Applicant

Vs.

1.Jeevan Polymers Private Limited
Represented by its Director
12/c, Cie Gandhi Nagar Chintal Balanagar,
Hyderabad, Andhra Pradesh – 500 037.

2.Sanjay Dugar ... Respondents

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 a receiver namely Mr.Praveen Goud of the applicant to seize and deliver the vehicle Registration No.TS08FE8484, Chassis No.WDD2050026L016907, Engine No.65192133497966 available at

respondent's premises or wherever found and permit the receiver namely Mr.Praveen Goud of the applicant to obtain police aid and to break open the premises.

For Applicant : Mr.M.Arunachalam

For Respondents : No Appearance

ORDER

The above application is filed by the non-banking finance company under Section 9 of the Arbitration and Conciliation Act, hereinafter called the Act, for appointing a named receiver to seize and deliver the Mercedes-Benz sports car, which is the subject matter of the loan agreement between the applicant and the 1st respondent.

2. It is the case of the applicant that they had entered into an agreement with the respondents, the 1st respondent is the borrower and the 2nd respondent is the co-borrower, in respect of the loan given by the applicant to the respondents for purchasing the subject

vehicle. Under the loan agreement a sum of Rs.35,00,000/- was financed by the applicant company and this sum together with interest was to be repaid by the respondents in 60 equated monthly installments of a sum of Rs.70,923/- The first of the installments was payable on 13.05.2017 and the last of the same was to be paid on 13.04.2022.

3. It is the case of the applicant that the respondents have been highly irregular in the repayment of the installment. As on 25.03.2021, only 30 installments were paid and 17 remained unpaid. Considering the default the applicant had also exercised their right under agreement and recalled the entire loan by a loan recall notice dated 21.08.2019. The respondents were called upon to pay the sum of Rs.24,45,964.49/-. The applicant would submit that their attempts to exercise their right of repossession of the vehicle was also in vain.

4. Considering the fact that the loan agreement contains an

arbitration clause in and by which the disputes were to be referred for arbitration the applicant had taken steps to appoint an arbitrator. However, the respondents did not consent for the same and the applicant has also taken steps to file Section 11 petition before this Court. Meanwhile, the applicant would submit that they apprehend that the vehicle would be removed out of their reach and the applicant may not be in a position to recover their dues. Therefore the application.

5. Heard the learned counsel and perused the records.

6. It is clear that the respondents have not cleared their dues though under the agreement they were bound to pay the equated monthly installment on the due dates without any demand being made for the same. The respondents have also questioned the appointment of the arbitrator by filing the application under Section 13 of the Act before the arbitrator, who has since recused himself from the

reference. Even thereafter, the respondents have not come forward to clear their outstanding. There is a deliberate attempt to not to repay the dues.

7. In these circumstances, in order to preserve the subject matter of the agreement, Mr.Praveen Goud of the applicant's company is appointed as Receiver to seize the vehicle covered under the contract. This order shall operate for a period of six (6) weeks from the date of receipt of a copy of this order.

8. The Receiver shall take possession of the Vehicle from the respondent or their agents or any person claiming under him or in whose possession the Vehicle is.

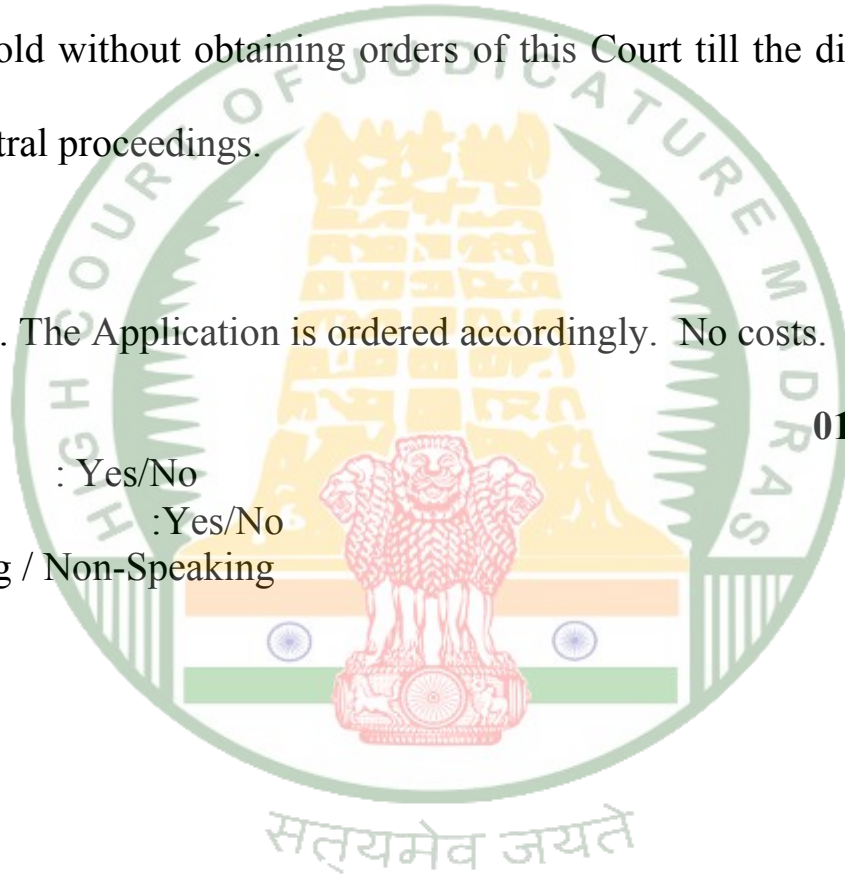
9. The Receiver shall also be provided Police assistance if requested by him, by the Station House Officer of the jurisdictional Police Station in which the vehicle is found.

10. It is made clear that the order of appointing the Receiver shall be served on the respondents by the applicant before the Receiver takes any action on the basis of this order. The vehicle shall not be sold without obtaining orders of this Court till the disposal of the Arbitral proceedings.

11. The Application is ordered accordingly. No costs.

01.04.2021

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P.T. ASHA. J,

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