

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 01ST DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.Application.No. 158 of 2021

In the matter of Arbitration &
Conciliation Act, 1996

And

In the matter of Disputes between
M/s. Cholamandalam Investment
and Finance Company Ltd. and
Mr.Natvarbhai Dashriabhai Vasava
Arising under Loan Agreement
No.XVFPVRA00002918815 Dated
17.04.2019.

M/s. Cholamandalam Investment
and Finance Company Limited,
No.45, Justice Basheer Ahmed Sayeed Building,
IInd Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai – 600 001.
Represented by its Authorised Signatory.

... Applicant

-Vs-

Mr.Natvarbhai Dashriabhai Vasava,
S/o Dashriabhai,
Holi Faliyu, Mauzatal,
Bharuch, Valiya, Near Temple,
Gujurat – 393 130.

... Respondent

Application praying that this Hon'ble Court be pleased to appoint
the employee of the Applicant viz, Mr.Hiren B Chauhan,
Area Receivable 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 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 the respondent herein not appearing in person or by advocate, and upon reading the Judges Summons and the affidavit of S.Sivasubramanian filed herein , **it is ordered as follows:-**

That Mr. Hiren B Chauhan, Area Receivable Manager, be and is hereby appointed as receiver, who is empowered to re-possess the vehicle morefully setout in the schedule hereunder from the respondent's premises or wherever found.

2. That the receiver appointed herein, on re-possession, shall hand over the custody of the same to the applicant immediately.

3. That if the receiver so requires, he shall also seek police aid and if necessary, break open the premises in order to re-possess the said vehicle in the presence of the police.

4. That if the applicant herein seeks to sell the re-possessed said vehicle, they shall approach the Arbitral Tribunal by filing an application under section 17 of the Arbitration and Conciliation Act and

the Arbitral Tribunal shall decide the said application on merits and in accordance with law.

SCHEDULE

Tata Xenon Crew Cab, bearing Engine
No.497SPTC43KVY638501, Chassis No.MAT524002ESK07177 and
Registration No.GJ-16-Z-4501.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT
MADRAS AFORESAID, THIS THE 01st DAY OF DECEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (Comm.Cases)
//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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MU
28.12.2021

Arb.Application.No. 158 of 2021

ORDER

DATED : 01.12.2021

THE HON'BLE MR. JUSTICE

ABDUL QUDDHOSE

FOR APPROVAL: 29.12.2021

APPROVED ON : 05.01.2022

Copy to:-

Mr. Hiren B Chauhan,
Area Receivable Manager
Receiver,
M/s. Chola mandalam Investment
and Finance Company Limited,
No.45, Justice Basheer Ahmed Sayeed
Building,
IInd Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai – 600 001.

Note:

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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... Applicant

-Vs-

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S/o Dashriabhai,
Holi Faliyu, Mauzatal,
Bharuch, Valiya, Near Temple,
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Application praying that this Hon'ble Court be pleased to appoint
the employee of the Applicant viz, Mr.Hiren B Chauhan,
Area Receivable 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 of premises if necessary.

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

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of Mr.Hiren B Chauhan, Area Receivable Manager, as a Receiver to re-possess the vehicle, which is the subject matter of the Loan Agreement dated 17.04.2019 entered into between the applicant and the respondent.

2. According to the applicant, under the aforementioned Loan Agreement, the respondent availed a loan of Rs.2,35,757/- (Rupees Two Lakhs Thirty Five Thousand Seven Hundred and Fifty Seven only) for the purchase of a vehicle, which is the subject matter of the Loan Agreement dated 17.04.2019. It is also the case of the applicant that the said vehicle is hypothecated with them. Under the said loan agreement, the respondent agreed to pay the total loan amount of Rs.3,26,559/- in 45 monthly instalments commencing from 20.05.2019 and ending on 20.01.2023.

3. According to the applicant, the respondent was making belated

payments and he has paid only 11.17 instalments and the remaining 9.83 instalments remains unpaid. According to the applicant, as on 10.08.2021, a sum of Rs.2,59,989.57 is due and payable by the respondent to the applicant.

4. The applicant has filed the following documents along with this application in order to substantiate their case for appointment of a Receiver to re-possess the vehicle.

- a) Loan Agreement dated 17.04.2019, which contains the arbitration clause and terms and conditions of the loan.
- b) Repayment Schedule
- c) Details of vehicle.
- d) Statement of Accounts disclosing that a sum of Rs.2,59,989.57 is due and payable as on 10.08.2021.
- e) Authorisation Letters dated 11.01.2019 and 26.07.2018.

5. The applicant has undertaken to initiate arbitration proceedings, as seen from the affidavit filed in support of this application in accordance with the Arbitration Agreement contained in the Loan Agreement dated 17.04.2019.

6. Though the respondent has been duly served and his name has also been printed in the cause list today, there is no representation on his side.

7. As seen from the aforementioned documents, it is clear that the respondent has committed default in repayment of the loan to the applicant and has been a chronic defaulter. Under the Loan Agreement, the applicant is empowered to re-possess the vehicle on its own. Since the applicant could not re-possess the vehicle on its own, they have come forward with this application under Section 9 of the Arbitration and Conciliation act, seeking for appointment of a Receiver to re-possess the hypothecated vehicle.

8. For the foregoing reasons, this Court is inclined to grant an order as prayed for in Arb.Appln.No.158 of 2021 by appointing Mr.Hiren B Chauhan, Area Receivable Manager, as the Receiver, who is empowered to re-possess the vehicle from the respondent's premises or wherever found and the said Receiver, on re-possession, shall hand over the custody of the same to the applicant immediately. If the Receiver so requires, he shall also seek police aid and if necessary, break open the premises in order to re-possess the vehicle in the presence of the Police. However, if the applicant seeks to sell the re-possessed vehicle, they shall approach the Arbitral Tribunal by filing an application under

Section 17 of the Arbitration and Conciliation Act and the Arbitral Tribunal shall decide the said application on merits and in accordance with law.

9. Accordingly, this application is allowed as prayed for.

Sd./- A.Q.J.
01.12.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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