

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. 277 of 2021

In the matter of Arbitration &
Conciliation Act, 1996

And

In the matter of Disputes between
M/s. Equitas Small Finance Bank
Limited and Mr.Mohammadshaphik
Mohmmadrashid And others
Arising under Loan Agreement
Dated 07.01.2020 bearing
Agreement No.SLAMRVI0261469.

M/s. Equitas Small Finance Bank Limited,
4th Floor, Phase – II, Spencer Plaza,
769, Anna Salai, Chennai,
Tamil Nadu – 600 002,
Represented by its Authorised Signatory
Mr.R.S.Bharath (Emp.No.31681).

... Applicant

-Vs-

1.Mr.Mohammadshaphik Mohammadrashid,
S/o Mohammad Rashid,
Ward No.4, Malipura, Morshi,
In front of Ramdeq Baba Mandir,
Amravathi, Maharashtra – 444 905.

... Borrower/ Respondent-1

2. Mrs.Rubinabi Mohammed Shafique,
W/o Mohammad Shafique,
Ward No.4, Malipura, Morshi,
In front of Ramdeq Baba Manidir,
Amravathi, Maharashtra – 444 905.

... Co Borrower/Respondent-2
: Respondents

Application praying that this Hon'ble Court be pleased to pass an order of appointment of Mr.Mangesh Prakash Yeole-Legal Officer of the applicant company as receiver to seize the vehicle more particularly described in the schedule to the Judges Summon wherever stationed in the premises of the respondents or wherever it is found and with whomsoever it is found with powers to break open the premises and grant permission to the receiver to obtain police aid from the concerned police officer.

This application coming on this day before this court for hearing in the presence of Mr.A.Damodaran, Advocate for the Applicant herein, and the respondents herein not appearing in person or by advocate, and upon reading the Judge's Summons and the affidavit of R.S.Bharath filed herein, **it is ordered as follows:-**

That Mr.Mangesh Prakash Yeole, Legal Officer, be and is hereby appointed as the 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 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

A 2019 MAHINDRA & MAHINDRA Light Commercial Vehicle bearing Chassis No.MAIZU2TBKK1M92751 and fitted with Engine No.TBK1M97565 and bearing registration No.MH 27 BX4112.

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. 277 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.Mangesh Prakash Yeole,
Legal Officer,
Receiver,
M/s. Equitas Small Finance Bank
Limited,
4th Floor, Phase – II, Spencer Plaza,
769, Anna Salai, Chennai,
Tamil Nadu – 600 002,

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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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

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... Co Borrower/Respondent-2
: Respondents

Application praying that this Hon'ble Court be pleased to pass an order of appointment of Mr.Mangesh Prakash Yeole-Legal Officer of the applicant company as receiver to seize the vehicle more particularly described in the schedule to the Judges Summon wherever stationed in the premises of the respondents or wherever it is found and with whomsoever it is found with powers to break open the premises and grant permission to the receiver to obtain police aid from the concerned police officer.

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.Mangesh Prakash Yeole, Legal Officer, as a Receiver to re-possess the vehicle, which is the subject matter of the Loan Agreement dated 07.01.2020 entered into between the applicant and the respondents.

2. The applicant is a financial institution and the first respondent is the borrower, who had borrowed money from them under a Loan Agreement dated 07.01.2020. The second respondent is the co-borrower. According to the applicant, under the aforementioned Loan Agreement, the respondents availed a loan of Rs.8,04,500/- (Rupees

Eight Lakhs Four Thousand Five Hundred only) for the purchase of a vehicle, which is the subject matter of the Loan Agreement dated 07.01.2020. It is also the case of the applicant that the said vehicle is hypothecated with them. Under the said loan agreement, the respondents agreed to pay the total loan amount of Rs.8,04,500/- in 58 monthly instalments commencing from 10.02.2020 and ending on 10.11.2024.

3. According to the applicant, the loan amount has been restructured and allotted new loan account and the same has to be repaid in 68 equated monthly instalments commencing from 05.05.2021 and ending on 05.10.2026. According to the applicant, as on 14.09.2021, a sum of Rs.61,165/- is due and payable by the respondents 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 07.01.2020, which contains the arbitration clause and terms and conditions of the loan.
- b) Certificate of Incorporation for change in name
- c) Registration Certificate
- d) Statement of Account disclosing that a sum of

Rs.61,165/- is due and payable as on 14.09.2021.

e) Authorization Letter.

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 07.01.2020.

6. Though the respondents have been duly served and their names have also been printed in the cause list today, there is no representation on their side.

7. As seen from the aforementioned documents, it is clear that the respondents have committed default in repayment of the loan to the applicant and they are chronic defaulters. 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.277 of 2021 by appointing Mr.Mangesh Prakash Yeole, Legal Officer, as the Receiver, who is empowered to re-possess the vehicle from the respondents' 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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