

A.No.3265 of 2020

P.T. ASHA, J.

This application is filed to appoint an Advocate Commissioner to seize and deliver the Vehicle Make – Mahindra and Mhindra-XUV 500, Registered No.TN-14A-6009, Chassis No.MA1YT2H -JUE6H16444, Engine No.HJE4H19470 available at the respondent premises or wherever found and permit the Advocate Commissioner to obtain police aid and to break open the premises.

2.The respondent herein had availed financial assistance from the applicant for the purpose of Construction Equipment, namely, Mahindra and Mahindra-XUV 500 vehicle. After negotiations, a Loan Agreement, bearing Account No.1325410 dated 31.01.2016, was entered into between the applicant and the respondent for a loan amount of Rs.13,35,000/- which was the amount financed by the applicant Company. Under the terms of the Agreement, the loan amount was to be repaid in 36 equated monthly installments of Rs.47,596/- commenced from 04.03.2016 and ending on 04.02.2019.

3.The applicant would submit that the respondent had committed default and had only paid 8 installments. The last installment was paid as early as on 09.03.2017 that too only a sum of Rs.22,600/-. Despite repeated demands, the respondent did not come forward to regularize the accounts.

4.By their letter dated 17.11.2016, the applicant had recalled the entire loan and called upon the respondent to pay a sum of Rs.12,68,705/-. The respondent despite receipt of the said notice had not come forward to pay the same.

5.Under the Loan Agreement, the vehicle was hypothecated to the applicant and the terms of the Agreement also allowed the respondent to repossess the vehicle and sell the same and offset the income towards the outstanding. The applicant would submit that despite the best efforts taken, they are not able to repossess the vehicle as the respondent was highly an influential person. Under the terms of the Loan Agreement, the parties had agreed to resolve the dispute through Arbitrator. The applicant had also initiated arbitral proceedings and an Award dated 23.12.2017 was passed in

favour of the applicant for a total amount of Rs.14,75,308/- together with interest @18% per annum from 18.12.2017 and cost of RS.15,000/-.

6.The applicant would submit that they are not able to file execution proceedings as the vehicle in question is not traceable. The applicant had not been able to identify the vehicle and unable to seize the same. Therefore, this present Application is filed.

7.Heard the learned learned counsel appearing for the applicant and perused the material on record.

8.From the records, it is seen that as against a total number of 36 installments, the respondent has paid only 8 installments and after 09.03.2017, no payment whatsoever has been paid by the respondent. The applicant though armed with an Award he was unable to execute the same on account of the whereabouts of the vehicle not being made available. Further, through the execution proceedings, they may not be able to repossess the vehicle as the borrower could remove the vehicle out of the jurisdiction of this Court and the Decree Holder, namely, the applicant

herein cannot be made to approach one Court after other to execute the Decree.

Therefore, this Court appoints Mr.Mohamedziauddin,K.M., Advocate, Enrol.No.Ms.2227/2010, No.13, I Street, SBI Colony, Anna Nagar, Pammal, Chennai – 600 075, as an Advocate Commissioner to seize the vehicle in its as is where its conditions. In this regard, the jurisdictional police, wherever the vehicle is found, shall render assistance if so demanded by the Advocate Commissioner without seeking separate orders in their favour. The Advocate Commissioner shall be paid an initial remuneration of Rs.30,000/-. The applicant shall undertake to bear all the other legal expenses that may become payable while repossessing the vehicle.

04.01.2021

mps

सत्यमेव जयते
WEB COPY

P.T. ASHA, J.

mps



A.No.3265 of 2020

04.01.2021

WEB COPY