IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.9465 of 2019

M/s.Shriram Transport Finance Co. Limited
Represented by its Authorized Signatory and Senior
Executive Mr.S.Jayakumar, S/o.Mr.K.Sridhar,
Having its Registered Office at Moogambika Complex,
III Floor, No.4, Lady Desika Road,
Mylapore, Chennai – 600 004. ... Applicant

Vs.

1.J.Pradeep Vijay Prasath

2.P.Ponnarasu ... Respondents

Prayer: Judges summons filed under Order XIV Rule 8 of Original Side Rules read with Section 9 (ii) (b) and (e) of the Arbitration and Conciliation Act, 1996, to appoint an Advocate Commissioner with direction to seize the schedule mentioned equipment which is lying under the custody of the respondents or their men, agents, servants or anyone claiming under them from the premises of 1st respondent at No.7, Parivakkam, Poonamallee, Chennai – 600 056 or at any other place where the scheduled asset is found, with the Police aid and by breaking open locks if necessary and to take the same into his / her custody and sell the same at fair market price.

For Applicant : No Appearance

For Respondent 1 : Mr.R.Ragavendran

ORDER

The above application is filed for appointment of an Advocate Commissioner to seize the schedule mentioned equipment, which is in the custody of the respondents from the premises of the 1st respondent or any other place where the schedule asset is found and to take the same into their custody and to sell it.

2. It is the case of the applicant that they had extended a loan of Rs.4,53,636/- which is returnable in 36 monthly installments from 05.09.2014 to 05.08.2017 at Rs.16,904/- for the first installment and thereafter at the rate of Rs.16,895/- per month. The case of the applicant is that after paying five installments the respondents have been in default and

the 1st respondent as borrower and the 2nd respondent as guarantor are liable to pay the outstanding sum of Rs.15,84,643/- as on 26.06.2019 when notice had been issued by the applicant to the respondents.

3. The applicant would submit that the agreement between the applicant and the respondents contained an arbitral clause which contemplates reference to an arbitrator in the case of dispute. Since the applicant apprehends that the respondents would dispose of the vehicle the present application is filed.

4. On entering appearance, the respondents have filed a counter along with typed set of papers enclosing the Registration Certificate of the vehicle. According to the respondents, the entire loan amount has been repaid and no-objection certificate for cancellation of the hypothecation has been issued by the applicant and the hypothecation has been canceled with effect 20.06.2016 and the same has also been recorded by the Assistant Registration Authority, Chennai.

5. The respondents would also contend that originally the vehicle was owned by one Anil Kumar who had hypothecated the vehicle to M/s.Magma Finance Corporation which hypothecation was canceled on 23.04.2011. Thereafter, one J.Uthiravelu purchased the vehicle. J.Uthiravelu had hypothecated the vehicle to the applicant with effect from 02.07.2012. In the year 2014, the 1st respondent had expressed his intention to purchase the vehicle from Uthiravelu and therefore the 1st respondent had entered into a loan agreement dated 24.07.2014 with the applicant who had extended a loan of Rs.4,53,636/-. Thereafter, the entire loan was repaid by the 1st respondent to the applicant who issued a no-objection for cancellation of the hypothecation. The hypothecation has also been canceled on 20.06.2016 and recorded by the Registration Authorities. The present application is nothing but an abuse of process of Court.

6. The learned counsel for the applicant has not appeared on earlier occasions as well as today.

7. A perusal of the counter and typed set of papers would indicate that the loan had been fully repaid by the 1st respondent and the hypothecation in favour of the applicant has been canceled with effect from 20.06.2016. This application has been filed in respect of the loan that has been fully repaid. The present proceedings is nothing but an abuse of process of Court and a fraud played on Court.

8. In these circumstances, the application is dismissed with costs of Rs.25,000/- payable to the 1st respondent within a period of four weeks from the date of receipt of a copy of this order.

9. List the matter on 16.02.2021 under the caption "For Reporting Compliance".

18.01.2021

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
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Note: Issue order copy on 19.01.2021.

P.T. ASHA. J,

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