



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 31ST DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Arb.A.No.39 of 2022

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.
Nizambhai Mahmadbhai Fangat
Arising under Loan Agreement No.
XSHUDHG00002910795 Dated
11.04.2019.

M/s. Cholamandalam Investment and Finance Company Limited,
No. 45, Justice Basheer Ahmed Sayeed Building,
IInd Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai – 600001.

Represented by its Authorised Signatory

... Applicant

versus

Mr. Nizambhai Mahmadbhai Fangat
S/o. Mahmadbhai
Jokiya Kuwa Pase,
Dhrangadhra, Surendra Nagar,
Gujarat – 363 310

... Respondent



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Arbitration Application praying that this Hon'ble Court be pleased to appoint employee of the Applicant viz. Mr. Makwana Mehulkumar Hasubhai, Branch Receivables 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 arbitration 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 judge's summons and the affidavit of S. Sivasubramanian filed herein and this Court is of the view that the applicant has made out a *prima facie* case and the balance of convenience is also in their favour. If the respondent had already sold the vehicle, the applicant would suffer irreparable loss and injury, **it is ordered as follows:-**

That Mr.Makwana Mehulkumar Hasubhai, Branch Receivables Manager, of the applicant's company be and is hereby appointed as Receiver to seize the vehicle morefully setout in the schedule hereunder covered



under the contract and this order shall operate for a period of four (4) weeks from the date of receipt of a copy of this order.

2) That the Receiver appointed herein shall take possession of the said vehicle from the respondent or their agents or any person claiming under him or in whose possession the vehicle is.

3) That since the respondent had deceased, the Receiver appointed herein, shall be entitled to seize the vehicle in question from the person under whose possession the vehicle is at present.

4) That the Receiver appointed herein, shall also be provided Police assistance if requested by him, by the Station House Officer of the jurisdictional Police Station in which the said vehicle is found.

5) That it is made clear that the order of appointing the Receiver appointed shall be served on the respondent by the applicant before the Receiver takes any action on the basis of this order and the vehicle shall not be sold without obtaining orders of this Court till the disposal of the Arbitral proceedings.



6) that the applicant herein, shall take steps to initiate arbitration proceedings within a period of 90 days from the date of this Order.

7) That there shall be no costs of this application.

SCHEDULE

Maruthi Swift VDI BS IV, bearing Engine No. D13A0407899, Chassis No. MA3FHEB1S00479672 and Registration No. GJ-13-CC-6853 lying at respondent premises or wherever found.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 31ST DAY OF MARCH 2022.

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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04.04.2022

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Arb.A.No.39 of 2022

ORDER

DATED : 31.03.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL: 04.04.2022

APPROVED ON: 05.04.2022

Copy to:-

Mr.Makwana Mehulkumar Hasubhai,
Receiver
Branch Receivables Manager,
M/s. Chola mandalam Investment and
Finance Company Limited,
No. 45, Justice Basheer Ahmed
Sayeed Building,
II Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai – 600001.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Arb.A.No.39 of 2022

M/s.Cholamandalam Investment and Finance Company Limited,
No.45, Justice Basheer Ahmed Sayeed Building,
II Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai – 600001.

Represented by its Authorised Signatory

... Applicant

Vs.

Mr.Nizambhai Mahamdbhai Fangat
S/o. Mahmadbhai
Jokiya Kuwa Pase,
Dhrangadhra, Surendra Nagar,
Gujarat – 363 310

... Respondent

Prayer: Application is filed under Order XIV Rule 8 of Original Side Rules r/w Section 9 (ii) (a) (b) (d) & (e) of the Arbitration and Conciliation Act, 1996 to appoint employee of the Applicant viz., Mr.Makwana Mehulkumar Hasubhai, Branch Receivables 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.



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For Applicant : Mr.D.Pradeep Kumar

ORDER

This Application has been filed under Order XIV Rule 8 of Original Side Rules r/w., Section 9 (ii) (a) (b) (d) & (e) of the Arbitration and Conciliation Act, 1996 seeking for appointment of a Receiver.

2. Cholamandalam Investment and Finance Company Limited having its registered office at Chennai – 600 001 is the Applicant. Applicant company is engaged in the business of providing finance in respect of motor vehicles. The respondent had approached the applicant for grant of loan for purchase of a vehicle “*Maruthi Suzuki VDI BS IV*” bearing registration No.GJ-13-CC-6853 and entered into a loan agreement with the the applicant. The respondent was to repay the loan in 39 equated monthly instalments. The money was disbursed to the respondent and various documents were executed by the respondent. The respondent is liable to repay to the applicant as per the loan agreement in a total sum of Rs.3,85,581.42/- including the finance charges. The respondent is also

liable to pay additional finance charges in the event of any delay or default



in payment of any of the installments, without prejudice to other rights available to applicant.

3. The respondent only paid few initial instalments as per schedule and thereafter the respondent was irregular in making the payments and the respondent turned out to be a chronic and wilful defaulter. Out of the 44 instalments, the respondent has only paid a sum of Rs.2,27,955.42/- and as on 28.01.2022, a sum of Rs.1,90,553.24 is payable by the respondent and the entire amount is falling due. The respondent failed to adhere to the financial discipline and several monthly instalments were not paid. The applicant has requested the respondent to repay the dues on several occasions, but the respondent has not paid the amount due to the applicant. All the efforts taken by the applicant to secure payment turned futile, as the respondent did not make payment and did not even permit the applicant to inspect the vehicle nor the respondent surrender the vehicle to the applicant, due to which the applicant has suffered heavy loss and therefore, the applicant has filed this application to appoint the employee of the applicant viz., Mr.Makwana Mehulkumar Hasubhai Branch Receivable Manager, as Receiver to seize and take possession of the vehicle from the respondent premises or wherever found with Police aid and break open of premises if necessary.



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4. The Court notice has been served on the respondent and the name of the respondent was also printed in the cause list, however, none appeared for the respondent either in person or through counsel and therefore, this Court set the respondent ex-parte on 07.03.2022.

5. In the meantime, the 5th Additional District Judge, Surendranagar by his letter dated 25.02.2022, stated that original notice issued in Arb.A.No.39 of 2022 is returned duly unserved as defendant is expired along with endorsement of the Bailiff. In the endorsement of the Bailiff, it has been stated that notice was served to elder brother of the defendant/respondent, who informed that the defendant expired on 29.09.2020 and a copy of the death certificate is also attached.

6. Heard the learned counsel appearing for the applicant.

7. Admittedly, the respondent has borrowed a loan with the Applicant company for purchase of car and entered into an agreement with the applicant. Subsequently the respondent committed default in payment of instalments. As per the loan agreement, the respondent is bound to deliver

the vehicle to the applicant in the event of default of payment of



instalments. Further, the right of repossession is an indispensable and valuable right available to the applicant under the agreement, as the vehicle is the only security for the amount financed, as such the vehicle is hypothecated in favour of the applicant and the applicant is entitled to possession and custody of the vehicle and also to sell the vehicle. On the other hand, the respondent shall not sell, transfer or create any other hypothecation, charge or any other encumbrance over the vehicle.

8. Clause 29 of the Agreement provides for Arbitration clause, which reads as follows:-

“All disputes, differences and/or claims arising out of this Agreement whether during its subsistence or there after shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Company.”

9. As per the agreement, the applicant is entitled to repossess the vehicle. Despite succeeding in the arbitration proceedings, the applicant will not be able to realise the fruits of the award, which is likely to be passed by the Arbitrator and the same would be mere paper decree without



serving any purpose if the vehicle is not repossessed and therefore, this Court is of the view that a Receiver has to be appointed to seize and take possession of the vehicle and hence, Application is liable to be ordered.

10. Taking into consideration the fact that the respondent has been in continuous default, this Court is of the view that the applicant has made out a *prima facie* case and the balance of convenience is also in their favour. If the respondent had already sold the vehicle, the applicant would suffer irreparable loss and injury. Accordingly, Mr. Makwana Mehulkumar Hasubhai, Branch Receivables Manager, 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 four (4) weeks from the date of receipt of a copy of this order.

11. 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.

12. Since the respondent had deceased, the Receiver is entitled to seize the vehicle in question from the person under whose possession the vehicle is at present.



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13. 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.

14. It is made clear that the order of appointing the Receiver shall be served on the respondent 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.

15. The applicant shall take steps to initiate arbitration proceedings within a period of 90 days from the date of this Order.

16. The Application is accordingly closed. No costs.

Sd/-P.V.J.
31.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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