

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 08TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Arb.A.No. 85 of 2021

In the matter of Arbitration and
Conciliation Act, 1996

And In the matter of Loan cum
Hypothecation Agreement and
dispute between M/s TVS Credit
Services Ltd., and DAVID A Loan
No.TN3000CA0012493 Dated –
21/12/2018.

TVS Credit Services Ltd,
Having registered office at
No 29, Third Floor, Jayalakshmi Estates,
Haddows Rd, Nungambakkam,
Chennai, Tamil Nadu 600 006,
Represented by its Regional Manager Legal,
Mr.C.Venkatesh.

... Applicant

-Vs-

David A,
No 2/16, Varadhappan Street,
West Mambalam, Chennai, Near Vasantham,
Hospital, Tamil Nadu, Chennai – 600 033.

... Respondent

Arbitraion Application praying that this Hon'ble Court be pleased
to appoint a receiver namely Mr.Ruban K.N. of the applicant to
seize and deliver the vehicle VOLKSWAGEN POLO TRENDLINE
1.2L bearing Registration No.TN01AR8940 Chassis

No.WVWA12605CT027041, Engine No.CJL052528 available at the Respondent's premises or wherever found and permit the receiver namely Mr.Ruban K.N. of the applicant to obtain police aid and to break open the premises.

This application coming on this day before this court for hearing in the presence of Mr.M.Arunachalam, Advocate for the applicant herein, and Mr.H.Manivannan, Advocate for the respondent herein, and upon reading the Judge's Summons and the affidavit of C.Venkatesh filed herein, **it is ordered as follows:-**

That Mr.Ruban K.N, be and is hereby appointed as receiver of the applicant herein, to seize and take possession of the vehicle morefully setout in the schedule hereunder, who shall after repossessing the vehicle, keep the same under the custody of the applicant herein.

2. That during the course of repossession of the vehicle, if the Receiver requires any police assistance, he shall seek the same from the police authorities and the police authorities shall grant police assistance and break open of premises, if the request made by the Receiver is a genuine one.

3. That if the applicant has already not initiated the arbitral proceedings in accordance with arbitration clause contained in the agreement, the applicant herein be and is hereby directed to initiate the

arbitral proceedings in accordance with arbitration clause within a period of two weeks from the date of receipt of a copy of this order.

SCHEDULE OF PROPERTY

The vehicle VOLKSWAGEN POLO TRENDLINE 1.2L bearing
Registration No.TN01AR8940 Chassis No.WVWA12605CT027041,
Engine No.CJL052528.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 08th DAY OF APRIL 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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13.04.2022

Arb.A.No. 85 of 2021

ORDER

DATED : 08.04.2022

THE HON'BLE MR. JUSTICE

P.VELMURUGAN

FOR APPROVAL: 13.04.2022

APPROVED ON : 21.04.2022

Copy to:-

Mr.Ruban K.N,
Receiver,
TVS Credit Services Ltd,
Having registered office at
No 29, Third Floor, Jayalakshmi Estates,
Haddows Rd, Nungambakkam,
Chennai, Tamil Nadu 600 006.

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... Applicant

-Vs-

David A,
No 2/16, Varadhappan Street,
West Mambalam, Chennai, Near Vasantham,
Hospital, Tamil Nadu, Chennai – 600 033.

... Respondent

Application praying that this Hon'ble Court be pleased to appoint
a receiver namely Mr.Ruban K.N. of the applicant to seize and deliver
the vehicle VOLKSWAGEN POLO TRENDLINE 1.2L bearing
Registration No.CJL052528 available at the Respondent's premises or

wherever found and permit the receiver namely Mr.Ruban K.N. of the applicant to obtain police aid and to break open the premises.

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

This application has been filed under section 9 (ii) (d) & (e) of the Arbitration and Conciliation Act, seeking for appointment of Mr.Ruban K.N as the Receiver of the applicant to seize and take possession of the vehicle which is lying in the custody of the respondent.

2. Under a Loan Agreement No.TN3000CA0012493 dated 21.12.2018, the respondent availed loan for the purchase of a vehicle, Volkswagen Polo Trendline 1.2 L bearing Registration No.TN01AR8940 Chassis No.WVWA12605CT027041 and Engine No.CJL052528 and the total amount of Rs.3,05,000/- together with interest @ 21.01% was repayable in 36 equated monthly installments of Rs.11,492/- commencing from 07.02.2019 to 07.01.2022. According to the applicant, the respondent committed default in the repayment of the loan amount as per the loan agreement. It is their case that the respondent paid 16 installments and thereafter, committed default. According to them, a sum of Rs.2,41,585/- was due and payable by the respondent as on 22.12.2020. Under the loan agreement, the applicant is having the right to repossess the vehicle from the respondent in case of default committed

by him. Since they have been unable to repossess the vehicle on their own, they have approached this Court under section 9 of the Arbitration and Conciliation Act before initiating the arbitration as per the arbitration clause contained in the loan agreement.

3. The applicant has filed the following documents namely (a) Copy of application dated 15.12.2018 (b) Copy of loan agreement and deed of hypothecation dated 21.12.2018 (c) Copy of Registration Certificate, (d) Copy of Loan recall notice dated 22.12.2020, (e) Statement of Account dated 16.07.2021 (f) Foreclosure letter dated 16.07.2021 and Copy of letter of authorisation dated 01.08.2019.

4. As seen from the above, it is clear that the respondent is a defaulter under the loan agreement dated 28.03.2019 and till date, he has also not surrendered the vehicle to the applicant, despite the said default.

5. The applicant has also expressed their willingness to go for arbitration in accordance with the arbitration clause contained in the agreement.

6. Till date, the respondent has not filed any counter. The learned counsel for the respondent has not denied the loan transaction and the existence of arbitration clause in the agreement.

7. After giving due consideration to the aforementioned factors, this Court is inclined to appoint Mr. Ruban K.N as the Receiver of the

applicant to seize and take possession of the vehicle which is mentioned in the schedule to the judges summons from the custody of the respondent or wherever found. Accordingly, Mr.Ruban K.N is appointed as Receiver of the applicant who shall after repossessing the vehicle, keep the same under the custody of the applicant. During the course of repossession of the vehicle, if the Receiver requires any police assistance, he may seek the same from the police authorities and the police authorities shall grant police assistance and break open of premises, if the request made by the Receiver is a genuine one.

8. Since the relief sought for by the applicant has been granted by this Court, this application is allowed in terms of the aforementioned directions. However, it is made clear that if the applicant has already not initiated the arbitral proceedings in accordance with arbitration clause contained in the agreement, the applicant is directed to initiate the arbitral proceedings in accordance with arbitration clause within a period of two weeks from the date of receipt of a copy of this order.

Sd./- P.V.J.
08.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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