



W.P.(MD)No.27007 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.11.2022

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THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) No.27007 of 2022

S.Muthupandi

.. Petitioner

Vs.

The Branch Manager,
HBD Financial Service Ltd.,
No.88, 2nd Floor, Balaji Tower,
Thadicombu Road,
Dindigul - 624 001.

.. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to release the Ashok Leyland Lorry bearing Registration No.TN 60 AW 8318 from their illegal custody seized on 01.11.2022.

For Petitioner : Mr.R.G.Shankar Ganesh

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus, directing the first respondent to direct the respondent to release the Ashok Leyland Lorry bearing Registration No.TN 60 AW 8318 from their illegal custody seized on 01.11.2022.



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2. Heard Mr.R.G.Shankar Ganesh, learned counsel for the petitioner.

Considering the nature of the order proposed to be passed in this writ petition, notice to the respondent is hereby dispensed with.

3. The grievance of the petitioner is that the seized vehicle has not been released till date.

4. The grievance of the petitioner is that the petitioner purchased a Lorry on loan for a sum of Rs.14,40,000/-. The petitioner was paying the monthly installments regularly before covid period. But due to pandemic situation owing to Covid-19, the petitioner was unable to pay the installments properly. Thereafter, several measurements were taken for repayment of the loan and Rs. 12,02,920/- out of Rs.14,40,000/- has been paid by the petitioner in equal monthly installments. While that being so, without any prior notice, the respondent seized the vehicle for the non-payment of monthly installment of four months. The petitioner approached the respondent seeking return of the seized vehicle. But the same has not been considered. Hence, the petitioner has filed the present writ petition with the aforesaid prayer.

5.It is an admitted fact that there is a loan agreement between the petitioner and the respondent. As per Clause 31 of the loan agreement, the



petitioner has to approach the respondent for appointment of Arbitrator, in case of failure of the dispute amicably resolved by the parties themselves. The relevant portion of the loan agreement reads as follows:

"31. ARBITRATION:

In case of any dispute or difference between the Parties hereto arising out of or in connection with this Agreement, shall be amicably resolved by the Parties. In the event the Parties fail to resolve such disputes amicably, such dispute of differences shall be referred to arbitration of a sole arbitrator to be appointed by HDBFS in accordance with the Arbitration and Conciliation Act, 1996 and rules framed thereunder. The venue for conducting the arbitration proceedings shall be Chennai, India. The language of the arbitration shall be English. The decision of the arbitrator shall be final and binding on the parties."

6. There is an efficacious alternative remedy available to the petitioner even under the loan agreement as stated above. Hence, the petitioner has to approach the respondent for appointment of an Arbitrator and the dispute between the parties has to be resolved by the Arbitrator, who is to be appointed by HDBFS in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. But the petitioner bypassing the said remedy, had straight away approached this Court under Article 226 of the Constitution of India.



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WEB COPY 7. For the foregoing reasons, this Court is not inclined to entertain this writ petition and accordingly, the same stands dismissed. However, it is open to the petitioner to approach the respondent financial service by giving an application seeking for appointment of an Arbitrator, who in turn, shall consider and pass appropriate orders on the same on merits and in accordance with law. There shall be no order as to costs.

30.11.2022

Index : Yes/No
Internet : Yes/No
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To

The Branch Manager,
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V.BHAVANI SUBBAROYAN, J.

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