



Arb Appln.No.14 of 2023

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WEB COURT **KRISHNAN RAMASAMY, J.,**

This application has been filed seeking for a direction to appoint Receiver Mr.Balaji Padmanaban of he applicant to seize and deliver the asset JCB 140 ARM Construction Equipment bearing Engine No.84944593, Chassis No. PUNJD14ATM2945189 available at the respondents premises or wherever found and permit the Receiver to obtain police Aid and to break open the premises.

2. The learned counsel appearing for the applicant would submit that the applicant provided loan to the respondent for purchase of the asset JCB 140 ARM Construction Equipment bearing Engine No.84944593, Chassis No. PUNJD14ATM2945189. Thereupon, the respondent has entered into Loan Agreement dated 11.01.2022 with the applicant. The brief details in nutshell are as follows:



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| <b>S.No.</b> | <b>Particulars</b>                | <b>Remarks</b>                         |
|--------------|-----------------------------------|----------------------------------------|
| 1.           | Name of the lender                | The applicant                          |
| 2.           | Name of the borrower              | 1 <sup>st</sup> respondent-Rajapandi P |
| 3.           | Name of the Guarantor             | 2 <sup>nd</sup> respondent-P.Pothumani |
| 4.           | Date of Loan Agreement            | 11.01.2022                             |
| 5.           | Loan Amount                       | Rs.39,83,515/-                         |
| 6.           | No.of installments                | 47 monthly installments                |
| 7.           | First installment                 | 09.02.2022                             |
| 8.           | Last installment                  | 09.12.2025                             |
| 9.           | Default EMIs as on 24.01.2023     | 8                                      |
| 10.          | Notice                            | 23.09.2022                             |
| 11.          | Reply to the notice               | No                                     |
| 12.          | Rate of interest                  | 11.90% p.a.                            |
| 13.          | Amount claimed                    | Rs.36,86,757/-                         |
| 14.          | Arbitration proceedings initiated | Yet to be initiated                    |

3. The learned counsel for the applicant further submits that the respondent, having availed the loan, failed to repay the same and committed default from 9<sup>th</sup> instalment onwards. He would submit that the hypothecated vehicle is a movable asset and if it is kept in idle condition, it would get damaged and its value also gets deteriorated and



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hence he would urge this Court to appoint an Advocate Commissioner to seize and handover the vehicle to the applicant bank morefully described in the schedule to the Judges summons available at the respondents premises, in order to make the security effective and the money in dispute in arbitration is fully secured by way of sale of the vehicle in public auction after following due process of law.

4. Upon considering the facts and circumstances of the case and the submissions made by the learned counsel for the applicant, this Court is satisfied that the applicant has made out a case in its favour and accordingly, Ms.S.Malathiraji, Advocate, No.427, New Additional Law Chambers, 4<sup>th</sup> Floor, High Court Buildings, Chennai 600 104, Mobile No.9489481869 and 8870260990 is appointed as the Advocate Commissioner to seize the asset, viz., JCB 140 ARM Construction Equipment bearing Engine No.84944593, Chassis No. PUNJD14ATM2945189, lying at the respondents' premises or wherever found and hand over the same to the custody of the applicant. She shall

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be paid her initial remuneration of Rs.30,000/- (Rupees Thirty Thousand only) in advance. The expenses toward her travel and stay shall be defrayed by the applicant.

5. It is hereby made clear that if police help is required, the Advocate Commissioner shall make a request to the local police station within whose jurisdiction the vehicle is found and on such request being made, the Station House Officer shall send the Police Personnel along with the Advocate Commissioner to seize the vehicle. If break open of a lock is required, the Advocate Commissioner shall do so in the presence of the police personnel who will counter-sign the record evidencing the break open of the lock and to re-lock the premises. After seizure, the vehicle is to be handed over to the applicant or to their representative, after taking inventories.

6. Accordingly, this Application is disposed of.

7. List the matter on 31.03.2023 for filing report of the Advocate



Commissioner.

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**20.02.2023**