Arb.Appln.Nos.20 to 25 of 2023

ABDUL QUDDHOSE, J.

M/s.Cholamandalam Investment and Finance Company Limited,
No.45, Justice Basheer Ahmed Sayeed Building,
IInd Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai – 600 001.
Rep. by its Authorised Signatory ... *Applicant in all Applications*

Vs.

Mr.Sanith Jan S. ... *Respondent in all Applications*

These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act'), seeking for appointment of an Advocate Commissioner to repossess the vehicles, morefully described in the schedule to the Judges Summons.

2. The applicant is a Non-Banking Financial Institution. The respondent had availed loan from the applicant for the purchase of vehicles, which are morefully described in the schedule to the Judges Summons in the respective applications.

3. According to the applicant, the respondent had earlier entered into Loan Agreements in the year 2018 and thereafter, the said Loan Agreements were closed and fresh Loan Agreements in the year 2021 were entered into by the respondent with the applicant. According to the applicant, the respondent is defaulter in repayment of the loan and substantial sums of money are due and payable by him under the six Loan Agreements entered into in the year 2021. Under the respective Loan Agreements, the applicant is empowered to repossess the vehicles which were hypothecated to the respondent, in the event of non-payment of the dues by the respondent to the applicant. Exercising the right of repossession available to the applicant under the Loan Agreements, the applicant has filed these applications seeking for appointment of an Advocate Commissioner to repossess the said vehicles.

4. A common counter-affidavit has been filed by the respondent, disputing the allegations of the applicant. According to the respondent, the six Loan Agreements of the year 2021 were never executed by him. According to him, he entered into the Loan Agreements only in the year 2018. According to the respondent, the six Loan Agreements which the applicant is relying upon, are all fabricated documents. According to the respondent, the loan amount was never disbursed to the respondent by the applicant in the year 2021. Under the aforementioned circumstances, the respondent seeks for dismissal of all these applications.

5. In the common counter-affidavit filed for all these applications, the respondent has admitted that certain sums of money are still due and payable by him to the applicant under the earlier Loan Agreements of the year 2018 and the details of the same, are as follows:-

Arb.Appln. No.	*Loan Agreement No.*	*Loan Agreement Date and Tenure*	*Loan Amount disbursed*	*No. of EMIs paid*	*No. of EMIs unpaid*	*Vehicle Registration No. (present*
20 of 2023	XVFPBGO00002334313	23-03-2018 37 months	Rs.1,17,32,500/-	25	12	NL 01 B 2156
21 of 2023	XVFPBGO00002334312	23-03-2018 37 months	Rs.1,17,32,500/-	25	12	NL 01 B 2157
22 of 2023	XVFPBGO00003090796	20-07-2019 37 months	Rs.55,00,000/-	8	28	NL 01 B 1630
23 of 2023	XVFPBGO00003090805	20-07-2019 37 months	Rs.55,00,000/-	8	28	NL 01 B 1631
24 of 2023	XVFPBGO00003090806	20-07-2019 37 months	Rs.55,00,000/-	8	28	NL 01 B 1634
25 of 2023	XVFPBGO00003090797	20-07-2019 37 months	Rs.55,00,000/-	8	28	NL 01 B 1663

6. Admittedly, the respondent is a defaulter under the earlier Loan Agreements entered into with the applicant in the year 2018, as seen from the above mentioned tabular column which has been extracted from the common counter-affidavit filed by the respondent before this Court in all these applications. In fact, as seen from the tabular column, in respect of 4 Loan Agreements of the year 2018, the respondent has paid only 8 installments and in respect of the other two Loan Agreements, the respondent has paid only 25 installments to the applicant.

7. When the matter was listed on the last hearing date i.e. on 01.09.2023, this Court, after hearing the submissions made by the learned counsel for the respondent, suggested to the learned counsel to get instructions as to whether the respondent will be in a position to take a Demand Draft favouring the applicant in respect of the amount due and payable by the respondent to the applicant as admitted in the counter-affidavit filed by the respondent, which has been extracted supra.

8. Today, when the matter is taken up for hearing, the learned counsel for the respondent would submit on instructions, in the presence of his client, that the respondent is not in a position to pay the admitted amount. Instead, he submitted that the respondent will be able to make the payment if a one-time settlement offer is given by the applicant which is agreeable to the respondent.

9. As seen from the common counter-affidavit, even according to the learned counsel for the respondent, the respondent is liable to pay under the earlier Loan Agreements of the year 2018, a sum in excess of Rs.2 Crores to the applicant. Admittedly, the said amount has also not been paid till date, even after the lapse of almost 5 years. The respondent has also not come forward to settle the dues of the applicant even as per the Loan Agreements, till date.

10. While that be so, the respondent does not have any legs to stand and he is estopped from raising a contention that the subsequent agreements of the year 2021, are fabricated documents. Certain documents have also been filed by the applicant before this Court which will also disclose that the respondent had acted upon the subsequent Loan Agreements of the year 2021, by making payments. Whether the said payments were made towards the subsequent Loan Agreements of the year 2021 or towards the earlier Loan Agreements of the year 2018 or not, will have to be examined by the

Arbitrator and not by this Court, while deciding the applications under Section 9 of the Act.

11. The learned counsel for the respondent further submitted that the respondent has already filed applications under Section 9 of the Act before the Commercial Court, Ernakulam, seeking for an order of injunction to restrain the applicant herein from repossessing the vehicles established under law. The said injunction was also granted by the Commercial Court, Ernakulam.

12. The seat of the address as seen from the arbitration clause is only at Chennai. The applicant is also having its registered office only at Chennai. Further, the injunction granted by the Commercial Court at Ernakulam, does not prevent the applicant from exercising its rights to repossess the vehicles by following the due procedure established under law. Therefore, there is no prohibition for the applicant to file these applications under Section 9 of the Act, by following the due procedure established under law.

13. Even though the applicant had sought for appointment of its own employee as a receiver to repossess the subject vehicles, this Court is not inclined to appoint the applicant's own employee as receiver since he is not the Officer of the Court. However, the applicant has established a *prima facie* case, balance of convenience and irreparable hardship.

14. For the foregoing reasons, these Arbitration Applications are disposed of and the following orders are passed by this Court:-

(a) Mr.V. Dinesh, Advocate, having Office at No.14, Sunkurama Street, 3rd Floor, Parrys, Chennai – 1, Mobile No:9840811160, is appointed as an Advocate Commissioner in Arb.Appln.Nos.20 & 21 of 2023, to repossess the subject vehicles, morefully described in the schedule to the Judges Summons from the respondent from his premises or wherever it is available;

(b) Mr.A.M. Basheer Rahman, Advocate, having Office at 222/74, Angappa Naicken Street, Chennai – 600 001, Mobile No:9841486832, is appointed as an Advocate Commissioner in

Arb.Appln.Nos.22 & 23 of 2023, to repossess the subject vehicles, morefully described in the schedule to the Judges Summons from the respondent from his premises or wherever it is available;

(c) Mr.A. Ramesh, Advocate, having Office at L.C.No.461, 4th Floor, New Additional Law Chambers, Madras High Court Buildings, Chennai – 104, Mobile No:9841847641, is appointed as an Advocate Commissioner in Arb.Appln.Nos.24 & 25 of 2023, to repossess the subject vehicles, morefully described in the schedule to the Judges Summons from the respondent from his premises or wherever it is available;

(d) All the Advocate Commissioners are permitted to obtain police aid and break open of the premises in case the vehicles are kept in a locked premises, in the presence of the Police, after taking proper inventory;

(e) All the Advocate Commissioners shall be paid an initial remuneration of Rs.30,000/- each and the same shall be paid within a period of one week from the date of receipt of a copy of this order or before the Advocate Commissioners execute the Warrant of Commission in accordance with the directions given by this Court. The boarding, lodging and travelling expenses shall be paid by the applicant to the Advocate Commissioners for executing the Warrant of Commission.

15. Post the matter on 30.10.2023 'for reporting compliance'

15.09.2023

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ABDUL QUDDHOSE, J.

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Arb.Appln.Nos.20 to 25 of 2023

15.09.2023