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**KRISHNAN RAMASAMY, J.**

This Arbitration Application has been filed for appointing an Advocate Commissioner to seize and deliver the vehicle/machine EXCAVATOR TATA-HITACHI bearing serial number SP20-28090 to the custody of the Applicant, available at the respondent premises or wherever found and with whomsoever it is found and permit the Advocate Commissioner to obtain Police aid and to break open the premises.

2. The learned counsel for the applicant submitted that the respondent entered into a Loan Agreement No.TUU00374E dated 06.07.2019 with the applicant company and availed a sum of Rs.49,95,242/- (Rupees Forty Nine Lakhs Ninety Five Thousand Two Hundred and Forty Two Only) as loan from the applicant company and purchased a vehicle/machine viz., EXCAVATOR TATA-HITACHI bearing serial number SP20-28090. One Mrs.S.Parimala Devi stood as a Guarantor to the said loan. As per the said Loan Agreement, the respondent shall repay the loan amount in 73 Equated Monthly Installments (EMIs) and in case of



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default, the respondent had agreed to pay an additional interest at the rate of 36% per annum on the amount from time to time in arrears until the payment of the entire outstanding dues. The respondent also liable to pay additional finance charges in the event of any delay or default in payment of any of the installments. The first installment for the said Loan Agreement commenced on 07.09.2019 and the last installment will end on 07.07.2025. The respondent hypothecated the said vehicle/machine to the applicant and created a charge in favour of the applicant as a security for the said loan amount.

2.1. The learned counsel further submitted that the respondent committed default in making payment of EMIs from the beginning. The respondent became an willful defaulter. The last payment made by the respondent was on 23.07.2022. As on 25.01.2023, the entire outstanding amount payable by the respondent to the applicant is Rs.54,33,339/-. That apart, the respondent is liable to pay further interest and additional finance charges until payment is made in full satisfaction of the loan amount. The particulars of the present case in a nutshell are as follows:



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| S.No. | Particulars | Remarks |
|---|---|---|
| 1 | Name of the lender | Applicant |
| 2 | Name of the borrower | Respondent |
| 3 | Name of the Guarantor | S.Parimala Devi |
| 4 | Date of Loan Agreement | 06.07.2019 |
| 5 | Loan Amount | Rs.49,95,242/- |
| 6 | No. of installments | 73 |
| 7 | First installment | 07.09.2019 |
| 8 | Last installment | 07.07.2025 |
| 9 | Sofar installments paid | ..... |
| 10 | Notice | 08.12.2022 |
| 11 | Reply to the Notice | Not Received |
| 12 | Rate of interest | 10.50% |
| 13 | Amount Claimed | Rs.54,33,339/- |
| 14 | Arbitration proceedings initiated | Applicant undertakes to initiate arbitral proceedings within 90 days |

2.2. The learned counsel also submitted that as per the terms of Clause 14 of the aforesaid Loan Agreement, in the event of default in payment of EMIs, the applicant is entitled to claim the entire amount due under the aforesaid Loan Agreement. Further, as per Clause 14 of the aforesaid Loan Agreement, in the event of any default committed by the respondent in payment of monthly installments towards the loan, the



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applicant has a right to repossess the subject vehicle/machine from the respondent. Though the applicant repeatedly demanded the respondent to repay the loan amount, till date, the respondent did not take any steps to repay the outstanding amount or surrender the vehicle to the applicant. Hence, left with no other alternative, the applicant has filed this Application seeking to appoint an Advocate Commissioner to repossess the subject vehicle.

3. Heard the learned counsel for applicant and perused the materials placed before this Court.

4. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel for the applicant, this Court is of the opinion that *prima facie* case has been made out by the applicant. Further, it is crystal clear that as per Clause 14 of the Loan Agreement dated 06.07.2019 entered into between the parties, the applicant is entitled to repossess the subject vehicle/machine from the respondent. Hence, this Court is inclined to allow this Application and



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appoint an Advocate Commissioner to seize the subject vehicle/machine from the respondent. Accordingly, this Arbitration Application is allowed and **Ms.R.Priya, Advocate, having office at No.39, 2nd Street, V.P.N.Colony, Kannikapuram, Chennai – 600 012, Mobile No.9345168710**, is appointed as Advocate Commissioner to seize the vehicle/machine viz., EXCAVATOR TATA-HITACHI bearing serial number SP20-28090 lying at the respondent's premises or wherever found and hand over the same to the custody of the applicant. The applicant shall pay a sum of Rs.30,000/- (Rupees Thirty Thousand Only) as initial remuneration to the Advocate Commissioner. The expenses towards her travel and stay shall also 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 breaking open of a lock is required, the Advocate Commissioner shall do so in the presence of the police



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personnel who will counter-sign the records evidencing the breaking open of the lock and re-locking of the premises. After seizure, the vehicle is to be handed over to the applicant or to their representative, after taking inventories. It is also made clear that after seizure of the vehicle, the applicant shall not sell away the vehicle without the permission of this Court.

6. Issue notice to the respondent through Court as well as privately, returnable by 14.03.2023.

7. List the matter on 14.03.2023, for filing the Advocate Commissioner's report.

13.02.2023

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**KRISHNAN RAMASAMY, J.**

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