

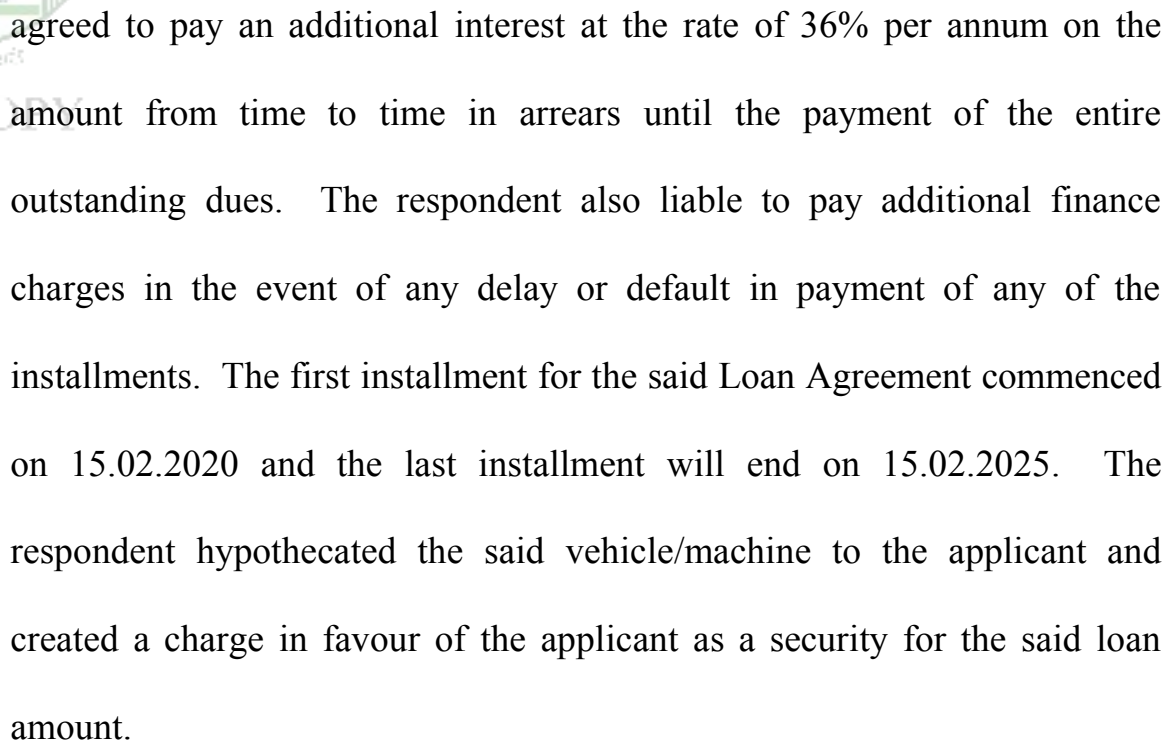


Arb.Appln.No.51 of 2023

WEB CO **KRISHNAN RAMASAMY, J.**

This Arbitration Application has been filed for appointing an Advocate Commissioner to seize and deliver the vehicle/machine EXCAVATOR SANY bearing serial number 19SEY021B76971 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.TAD00385E dated 16.12.2019 with the applicant company and availed a sum of Rs.44,03,100/- (Rupees Forty Four Lakhs Three Thousand and One Hundred Only) as loan from the applicant company and purchased a vehicle/machine viz., EXCAVATOR SANY bearing serial number 19SEY021B76971. One Mr.K.Dhanapal stood as a Guarantor to the said loan. As per the said Loan Agreement, the respondent shall repay the loan amount in 64 Equated Monthly Installments (EMIs) and in case of default, the respondent had



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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	Mr.K.Dhanapal
4	Date of Loan Agreement	16.12.2019
5	Loan Amount	Rs.44,03,100/-
6	No. of installments	64
7	First installment	15.02.2020
8	Last installment	15.02.2025
9	Sofar installments paid	40
10	Notice	05.12.2022
11	Reply to the Notice	Not Received
12	Rate of interest	10.54%
13	Amount Claimed	Rs.6,81,428/-
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 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 16.12.2019 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 appoint an Advocate Commissioner to seize the subject vehicle/machinery



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from the respondent. Accordingly, this Arbitration Application is allowed and **Mr.L.Poovendra Perumal, Advocate, having office at 2nd Floor, Vanguard House, No.48/148, Moore Street, Chennai – 600 001, Mobile No.9940192172**, is appointed as Advocate Commissioner to seize the vehicle/machine viz., EXCAVATOR SANY bearing serial number 19SEY021B76971 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.25,000/- (Rupees Twenty Five Thousand Only) as initial remuneration to the Advocate Commissioner. The expenses towards his 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 personnel who will counter-sign the records evidencing the breaking open



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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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