



Arb.Appln.No.132 of 2023

WEB **KRISHNAN RAMASAMY, J.**

This Arbitration Application has been filed by the applicant seeking to grant an order appointing an Advocate Commissioner to seize and deliver the Asset HYUNDAI – CRETA 1.6 VTVT SX + Motor Car bearing Registration No.MH-46-AP-0969, Engine No.G4FGFU995022, Chassis No.MALC381CLFM021127 available at the respondent's premises or wherever 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 has entered into a Loan-cum-Hypothecation Agreement for Auto Loan/Used Car Loan/Equipment Finance bearing Contract No.TCFUC0632000011580652 dated 29.08.2022 with the applicant company and availed a sum of Rs.12,60,000/- (Rupees Twelve Lakhs Sixty Thousand Only) as loan from the applicant company and purchased a vehicle viz., HYUNDAI – CRETA 1.6 VTVT SX + Motor Car bearing Registration No.MH-46-AP-0969, Engine No.G4FGFU995022, Chassis No.MALC381CLFM021127. As per the terms and conditions of the said Loan



Agreement, the respondent shall repay the loan amount in 47 months with Equated Monthly Installment of Rs.35,772/- per month commencing from 03.10.2022 to 30.08.2026. In the event of any default committed by the respondent in payment of monthly installments towards the loan, the respondent is liable to pay additional finance charges at the rate of 3% per month to the applicant from the date of default till payment. The respondent hypothecated the said vehicle to the applicant as a security for the said loan amount.

2.1. The learned counsel further submitted that the respondent paid only 2 installments to the applicant and thereafter, committed default in making payment of installments which is contrary to the terms and conditions of the aforesaid Loan Agreement. The last payment made by the respondent was on 03.11.2022 and thereafter, no payments were forthcoming from the respondent. Hence, the applicant vide Loan Recall Notice dated 12.01.2023, called upon the respondent to settle the entire outstanding loan amount, for which, there was response from the respondent. Till date, the respondent has neither repaid the outstanding loan amount nor surrendered the hypothecated vehicle to the applicant. As on 09.03.2023, the entire outstanding amount payable by the respondent to the



applicant is Rs.13,78,198/-. The particulars of the present case are given below

in a nutshell manner:

S.No.	Particulars	Remarks
1	Lender	Applicant
2	Borrower	Respondent
3	Guarantor	
4	Date of Loan Agreement	29.08.2022
5	Loan Amount	Rs.12,60,000/-
6	No. of installments	47
7	First installment	03.10.2022
8	Last installment	30.08.2026
9	Sofar installments paid	2
10	Notice	12.01.2023
11	Reply to the Notice	Nil
12	Rate of interest	15.25% p.a
13	Amount Claimed	Rs.13,78,198/-
14	Arbitration proceedings initiated	Yet to be initiated

2.2. The learned counsel also submitted that as per Clause 13 of the aforesaid Loan Agreement, if disputes and differences arising or performance or non-performance of the agreement, the same shall be settled by a Sole Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996. Hence, the applicant initiated arbitration proceedings against the respondent by appointing



an Arbitrator on 09.02.2023 after issuing Arbitration Notice dated 01.02.2023 to the respondent. The respondent made his objection for appointment of arbitrator vide letter dated 23.02.2023. So, the arbitration proceeding has not commenced further. As per Clause No.18.5 of the Master terms and conditions registered as Document No.8978-2018 dated 06.11.2018 with the Sub-Registrar, Mumbai City – 3 read along with the aforesaid Loan Agreement dated 29.08.2022, 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 hypothecated vehicle from the respondent. Hence, the applicant has filed this Application, seeking to appoint an Advocate Commissioner to seize 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. Hence, this Court is inclined to allow this Application and appoint an Advocate



Commissioner to seize the subject vehicle from the respondent. Accordingly, this Arbitration Application is allowed and **Mr.Prathik Jain, Advocate, having office at (Old No.78) New No.161, Govindappa Naicken Street, 1st Floor, Chennai – 600 001, Mobile No.9042425922** is appointed as Advocate Commissioner to seize the vehicle viz., HYUNDAI – CRETA 1.6 VTVT SX + Motor Car bearing Registration No.MH-46-AP-0969, Engine No.G4FGFU995022, Chassis No.MALC381CLFM021127 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) in advance 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 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 24.04.2023.

7. List the matter on 24.04.2023, for filing the Advocate Commissioner's report.

21.03.2023

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Note to Registry: Issue order copy on 10.04.2023



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KRISHNAN RAMASAMY, J.

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