**KRISHNAN RAMASAMY, J.**

This Arbitration Application has been filed by the applicant seeking to appoint employee of the applicant viz., Mr.K.Sabu, B.A., L.L.B., Area Legal Manager, as Receiver to seize and take possession of the vehicle viz., Ashok Leyland 3520, bearing Registration No.KA-01-AM-3654, Engine No.MAHZ417675 and Chassis No.MB1KJCHD6MRAS7179 lying in the custody of respondent or respondent's men, agents, servants from respondent premises or wherever found with Police aid and break open of premises if necessary.

2. The learned counsel for the applicant submitted that the respondent has entered into Loan Agreement No.XVFPMJI00004422683 dated 27.11.2021 with the applicant company and availed a sum of Rs.34,20,085/- as loan from the applicant company and purchased the vehicle viz., Ashok Leyland 3520, bearing Registration No.KA-01-AM-3654, Engine No.MAHZ417675 and Chassis No.MB1KJCHD6MRAS7179. One Mr.Alavi Muthuvallur was co-borrower. As per the terms and conditions of the said Loan Agreement, the respondent shall repay the loan amount together with interest at a rate of 11.07% p.a in 58 monthly

installments commencing from 28.12.2021 to 28.09.2026. Further, as per the aforesaid Loan Agreement, in the event of any delay or default in payment of any of the monthly installments, the respondent is liable to pay additional finance charges to the applicant. The respondent hypothecated the said vehicle in favour of the applicant as security for the loan.

2.1. After availing the loan, the respondent has paid 13.3 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. Hence, the applicant vide Notice dated 10.10.2022, called upon the respondent to settle the outstanding loan amount. Even after the receipt of said notice, the respondent neither repaid the outstanding loan amount nor surrendered the hypothecated vehicle to the applicant. As on 23.03.2023, the total outstanding amount payable by the respondent to the applicant is Rs.29,87,988.21/-. The particulars of the present case are given below in a nutshell manner:

| S.No. | Particulars | Remarks |
|---|---|---|
| 1 | Lender | Applicant |
| 2 | Borrower | Respondent |
| 3 | Co-Borrower | Mr.Alavi Muthuvallur |
| 4 | Date of Loan Agreement | 27.11.2021 |

| S.No. | Particulars | Remarks |
|---|---|---|
| 5 | Loan Amount | Rs.34,20,085/- |
| 6 | Total No. of installments | 58 |
| 7 | First installment | 28.12.2021 |
| 8 | Last installment | 28.09.2026 |
| 9 | Sofar installments paid | 13.3 |
| 10 | Demand Notice | 10.10.2022 |
| 11 | Reply to the Notice | Nil |
| 12 | Rate of interest | 11.07% p.a |
| 13 | Amount Claimed | Rs.29,87,988.21/- |
| 14 | Arbitration proceedings initiated | Applicant undertakes to initiate arbitral proceedings |

2.2. The learned counsel further submitted that it is a settled law that if the borrower fails to repay the borrowed amount, the lender is entitled to sell the hypothecated asset as to realize the amount due to them. Since the respondent has committed default in payment of monthly installments towards the loan, the applicant has a right to repossess the subject hypothecated vehicle from the respondent. That apart, the hypothecated vehicle is a movable asset and if the same is kept idle by exposing it to rain and shine, its value would be certainly deteriorated. Therefore, the learned counsel prayed this Court to appoint an Advocate as Receiver to seize and take possession of the subject hypothecated vehicle.

3. Despite the service of notice and name of the respondent being printed in the cause list, none appeared on behalf of the respondent. This itself clearly shows that the respondent is not interested to contest the matter.

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

5. 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 satisfied that the applicant has made out a case in its favour. Hence, this Court appoints **Mr.K.A.Prabaharan, Advocate, having office at 223, N.S.C.Bose Road, Y.M.C.A.Building, IInd Floor, Chennai – 600 001, Mobile No.9710916685** as Receiver to seize the vehicle viz., Ashok Leyland 3520, bearing Registration No.KA-01-AM-3654, Engine No.MAHZ417675 and Chassis No.MB1KJCHD6MRAS7179 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 Receiver, within a period of two weeks from the date of receipt of communication from the Receiver. The expenses towards travel and stay of the Receiver shall also be defrayed by the applicant.

6. It is hereby made clear that if police help is required, the Receiver 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 Receiver to seize the vehicle. If breaking open of a lock is required, the Receiver shall do so in the presence of the Station House Officer 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.

7. This Application is disposed of with the above observations.

15.06.2023

mrr

***Note to Registry: List the matter on 24.07.2023, for filing the Receiver's Report.***

**KRISHNAN RAMASAMY, J.**

mrr

Arb.Appln.No.182 of 2023

15.06.2023