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 BHARAT BENZ 1623C BSIV Goods Carrier Vehicle bearing Registration No.KA 01 AJ 9009, Engine No.400952D0067885 and Chassis No.MEC2316BGJP068094 available at the respondents' 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 first respondent as borrower and second respondent as co-borrower have entered into Loan-cum-Hypothecation Agreement vide bearing Contract No.20141124 dated 16.11.2018 with the applicant company and availed a sum of Rs.22,78,000/- (Rupees Twenty Two Lakhs Seventy Eight Thousand only) as loan from the applicant company and purchased the Asset BHARAT BENZ 1623C BSIV Goods Carrier Vehicle bearing Registration No.KA 01 AJ 9009, Engine No.400952D0067885 and Chassis No.MEC2316BGJP068094. As per the terms and conditions of the said

Loan-cum-Hypothecation Agreement, the respondents shall repay the loan amount together with interest at a rate of 11.50% p.a in 48 Equated Monthly Installments commencing from 18.12.2018 to 18.04.2023. Further, as per the aforesaid Loan-cum-Hypothecation Agreement, in the event of any default in payment of monthly installments towards the loan, the respondents are liable to pay additional finance charges to the applicant from the date of default till payment. The respondents have hypothecated the said vehicle to the applicant as a security for the said loan amount.

2.1. The learned counsel further submitted that the respondents have paid 44 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-cum-Hypothecation Agreement. Hence, the applicant vide Loan Recall Notice dated 09.03.2021, called upon the respondents to settle the outstanding loan amount. Even after the receipt of said notice, the respondents neither repaid the outstanding loan amount nor surrendered the hypothecated vehicle to the applicant. As on 15.05.2023, the total outstanding amount payable by the respondents to the applicant is Rs.7,32,716.60/-. The particulars of the present case are given below in a nutshell manner:

S.No.	Particulars	Remarks
1	Lender	Applicant
2	Borrower	1st Respondent
3	Co-Borrower	2nd Respondent
4	Date of Loan Agreement	16.11.2018
5	Loan Amount	Rs.22,78,000/-
6	Total No. of installments	48
7	First installment	18.12.2018
8	Last installment	18.04.2023
9	Sofar installments paid	44
10	Loan Recall Notice	09.03.2021
11	Reply to the Notices	No Reply Notice
12	Rate of interest	11.50%
13	Amount Claimed	Rs.7,32,716.60/-
14	Arbitration proceedings initiated	Award passed on 20.09.2021

2.2. The learned counsel also submitted that as per Clause 85 of the Loan-cum-Hypothecation Agreement entered into between the parties, all claims and disputes arising under the said agreement shall be settled by arbitration. Hence, the applicant initiated arbitration proceedings against the respondents by appointing one Mr.S.Gopinath, Advocate as Sole Arbitrator to adjudicate the dispute between the parties. The learned Arbitrator issued notice to the respondents and called upon them to appear for hearing, but, even after the receipt of said notice, the respondents did not appear before the Arbitrator. Hence, the learned Arbitrator passed the Award dated 20.09.2021 in favour of the applicant by directing the respondents to pay a sum of Rs.16,78,820.94/- together with interest at the rate of 18% p.a from 22.06.2021 till the date of realization, to the applicant. Subsequent to the award, the respondents have made a part payment on 03.10.2022 and thereafter, no payments were made by them. Though the award was passed on 20.09.2021, till date, the applicant could not execute the same. Hence, left with no other alternative, the applicant has filed the present application.

2.3. Further, the learned counsel submitted that as per Clause 68 of the aforesaid Loan-cum-Hypothecation Agreement, in the event of any default committed by the respondents in payment of monthly installments, the applicant has a right to repossess the asset (vehicle) from the respondents. However, in the present case, the respondents have not yet surrendered the asset (vehicle) to the applicant. Moreover, the respondents are attempting to illegally transfer the asset (vehicle) to third parties. If the respondents succeed in their attempt, the applicant will lose the security for the grant of loan to them. That apart, if the asset (vehicle) is kept idle by exposing the same to rain and shine, its value would be certainly deteriorated.

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 and the balance of convenience is also in favour of the applicant. Hence, this Court is inclined to allow this Application and appoint an Advocate Commissioner to seize the subject vehicle from the respondents. Accordingly, this Arbitration Application is allowed and **Mr.M.R.Vinoth Prabhu, Advocate, having office at No.131/17, Velachery Bye-Pass Raod, Velachery, Chennai – 600 042, Mobile No.9042067979** is appointed as Advocate Commissioner to seize the Asset BHARAT BENZ 1623C BSIV Goods Carrier Vehicle bearing

Registration No.KA 01 AJ 9009, Engine No.400952D0067885 and Chassis No.MEC2316BGJP068094 lying at the respondents' 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 respondents through Court as well as privately, returnable by 24.07.2023.

7. List the matter on 24.07.2023, for filing the Advocate Commissioner's report.

12.06.2023

mrr

KRISHNAN RAMASAMY, J.

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Arb.Appln.No.284 of 2023

12.06.2023