



Arb.Appln.No.301 of 2023

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ABDUL QUDDHOSE, J.

M/s.Mercedes - Benz Financial Services
India Pvt. Ltd.

.. Applicant

vs

1.Rajesh Construction Co.
2.Meenu Ram

..Respondents

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for appointment of Advocate Commissioners, to repossess the vehicles morefully described in the schedule to the Judges Summons.

2. The applicant is a Non Banking financial Institution. The respondents have borrowed money from the applicant under a Loan cum Hypothecation Agreement dated 31.05.2019. The respondents have committed default in the repayment of the loan to the applicant. In terms of the Arbitration clause available in the Loan cum Hypothecation agreement, the applicant has initiated Arbitration.



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3. The sole Arbitrator has passed an Arbitral Award dated 09.02.2022

in favour of the applicant. As seen from the Arbitral Award, the respondents have been directed to pay Rs.1,84,48,810/- (Rupees One Crore Eighty Four Lakhs Forty Eight thousand and eight hundred and ten only) together with interest and costs. Even though the Arbitral Award was passed on 09.02.2022, the respondents have neither challenged the said Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996, nor have they settled the dues of the applicant. Under the Loan cum Hypothecation agreement, the applicant is empowered to repossess the vehicles which are the subject matter of the said agreement. As seen from the affidavit, the applicant was unable to repossess the vehicles since the same was not traceable. According to the applicant, only now, the vehicles are traceable and therefore, they are constrained to file this petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Advocate Commissioner to repossess the vehicles morefully described in the schedule to the Judges summons. They have also expressed difficulty in executing the Arbitral Award and obtain orders for the repossession of the subject vehicles in this Execution Petition. Only under those circumstances, this application has been filed.



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4. This Court had earlier issued notice to the respondents on 24.07.2023. The notice has also been served on the respondents, but till date they have not entered appearance in this application. The names of the respondents has also been printed in the cause list, today. Since a prima facie case has been made out by the applicant for the appointment of an Advocate Commissioner by this Court to repossess the vehicles morefully described in the Judges Summon, this Court is allowing this application as prayed for by appointing two Advocate Commissioners to repossess the vehicles morefully described in the schedule to the Judges Summon wherever they are available. The balance of convenience is also in favour of the applicant for appointment of Advocate Commissioners to repossess the vehicles and irreparable loss would be caused to the applicant if the vehicles are not repossessed.

5.For the foregoing reasons, this Court issues the following directions:

a)Mr.R. Baskaradoss, Advocate, having Office at No.261, Additional Law Chamber, High Court Campus, Chennai, (Mobile No.9042191836) and Mr.P.Velmurugan, Advocate, having Office at 75, West Madha Church Road, Royapuram, Chennai - 13 (Mobile



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No.9092541000) are appointed as an Advocate Commissioners to repossess the vehicle morefully described in the schedule to the Judges summons.

b)The Advocate Commissioners are permitted to obtain police aid and break open of the premises in case the vehicle is kept in a locked premises, in the presence of the Police, after taking proper inventory.

c)The Advocate Commissioners shall be paid an initial remuneration of Rs.15,000/- each and the same shall be paid within a period of one week from the date of receipt of a copy of this order or before the Advocate Commissioners execute the Warrant of Commission in accordance with the directions given by this Court. The Boarding, lodging and travel expenses shall be paid by the applicant to the Advocate Commissioners for executing the warrant of Commission.

d)The applicant is also directed to initiate arbitration in accordance with the arbitration clause within a period of three months from the date of receipt of a copy of this order.

6. Accordingly, this application stands disposed of. Post the matter on 03.10.2023 'for reporting compliance'.

05.09.2023

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