Arb.Appln.No.427 of 2023

ABDUL QUDDHOSE, J.

M/s.Mahaveer Finance India Limited,
Registered office at: No.41/44, K.G. Plaza,
T8/T9, 3rd Floor, G.P. Road next to
Sathyamurthy Bhavan, Chennai – 600 002.
Rep. by its Authorized Officer Mr.N. Venkatesh ... Applicant

Vs.

1.Mr.Dinesh Kumar.K

2.Mr.Johnson ... Respondents

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Advocate Commissioner to seize and deliver the vehicle, morefully described in the schedule to the Judges Summons.

2. An affidavit of service has been filed by the learned counsel for the applicant. As seen from the affidavit of service as well as the acknowledgment card enclosed along with the same, the respondents have duly acknowledged the receipt of the notice in this application. The names of the respondents are also printed in the cause list today. Since the respondents have been duly served in this application and there is no representation on behalf of them, the respondents are set *exparte*.

3. The applicant is a Non-Banking Financial Institution. The first respondent borrowed money from the applicant under the Loan cum Hypothecation Agreement dated 17.01.2018 for the purchase of vehicle, morefully described in the schedule to the Judges Summons. As seen from the affidavit filed in support of this application as well as the Statement of Accounts, the loan amount of Rs.4,87,500/- together with interest was repayable by the first respondent to the applicant in 30 monthly installments. The first respondent is a defaulter in repayment of the loan to the applicant. The second respondent is a guarantor to the loan transaction. The first respondent has paid only 4 installments and the last part payment made by the first respondent was on 04.01.2020 which was adjusted towards additional installment payable by him.

4. The applicant has already initiated arbitration in accordance with the arbitration clause contained in the Loan cum Hypothecation Agreement dated 17.01.2018, which is extracted hereunder:-

> ***"15. (a)*** *All disputes, differences and/or claims, arising out of this hire purchase agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of Indian Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the Owner. The award given by such an Arbitrator nominated by the Owner shall be final and binding on all the parties to this agreement.*
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> *It is a term of this agreement that in the even of such an Arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Owner, at the time of such death of the Arbitrator or his inability to act as Arbitrator, shall appoint another person to act as Arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.*
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> *Notwithstanding anything contained in any of the aforesaid clauses, the Hirer agrees that the Owner shall be entitled to vary the Installments of Hire Money in the event of a change occurring in the lending rates charged to the Owner by its bankers. Consequently, for every change in the banks' lending rates of half percent per annum, the installments of*

hire money as mentioned in the Second Schedule, falling due on or after the date of such change shall stand revised by the amounts mentioned in the Third Schedule to this Agreement.”

5. An Arbitral Award dated 30.06.2021 has also been passed in favour of the applicant against the respondent. As seen from the Arbitral Award, it is clear that the respondents are defaulter in repayment of the loan and they are liable to pay the outstanding amount to the applicant in accordance with the Loan cum Hypothecation Agreement.

6. The applicant now states that the respondents are attempting to alienate/encumber the property morefully described in the schedule to the Judges Summons. They have also stated that despite the Arbitral Award, the respondents have not surrendered the vehicle to the applicant.

7. The Loan cum Hypothecation Agreement dated 17.01.2018 empowers the applicant to repossess the vehicle from the respondents. The applicant has expressed its difficulty in repossessing the vehicle on its own. Only under those circumstances, this application has been filed.

8. Since a *prima facie* case has been made out by the applicant and the balance of convenience is also in its favour, this Court is inclined to appoint an Advocate Commissioner to repossess the vehicle, morefully described in the Schedule to the Judges Summons. Irreparable loss will also be caused to the applicant if the vehicle is not repossessed from the respondents, that too, when the respondents are found to be defaulters as seen from the Arbitral Award passed against them.

9. For the foregoing reasons and since the respondents have been duly served in this application and they have been set *exparte*, this Arbitration Application is allowed as prayed for and the following order is passed by this Court:-

(a) Ms.L. Arivukkarasi, Advocate, having office at 344, New Additional Law Chambers, Madras High Court, Women Lawyer's Association, Chennai – 600 104, Mobile Nos.: 9841163845 & 9841764170, is appointed as an Advocate Commissioner to repossess the subject vehicle, morefully described in the schedule to the Judges Summons from the first respondent from his premises or wherever it is available;

ABDUL QUDDHOSE, J.

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(b) The Advocate Commissioner is 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 Commissioner shall be paid an initial remuneration of Rs.15,000/- 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 Commissioner executes the Warrant of Commission in accordance with the directions given by this Court. The boarding, lodging and travelling expenses shall be paid by the applicant to the Advocate Commissioner for executing the Warrant of Commission.

10. Post the matter on 16.10.2023 'for reporting compliance'

04.09.2023

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Arb.Appln.No.427 of 2023