



Arb.Appln.No.412 of 2023

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ABDUL QUDDHOSE, J.

M/s.Cholamandalam Investment and
Finance Company Limited,
represented by its Authorised Signatory

.. Applicant

vs

Arjun Keru Chumble

.. Respondent

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of the applicant's own employee as Receiver to repossess the vehicle morefully described in the schedule to the judges summons.

2.At the outset, this Court is of the considered view that the applicant's own employee cannot be appointed as a Receiver, as he is not an officer of this Court.

3.The applicant is a Non-Banking Financial Institution. The respondent has availed a loan from the applicant for the purchase of



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construction equipment under a Loan Agreement dated 27.02.2023. The total loan amount was payable by the respondent under the Loan Agreement is Rs.74,98,999.93 and the same was repayable in 61 monthly installments, commencing from 05.04.2023 and ending on 05.04.2028. The respondent is not a defaulter in the repayment of the loan, but, according to the applicant, the respondent has committed breach of contract by attempting to export the hypothecated construction equipment to a foreign country.

4.Notice in this application has been duly served on the respondent. The name of the respondent is also printed in the cause list today. Despite service of notice, the respondent has chosen not to enter appearance. Hence, the respondent is set *ex-parte* by this Court.

5.According to the applicant, the construction equipment is now lying at the container freight station at Speedy Multimode, JNP CFS, Jawaharlal Nehru Port, Sonari Village, Taluka Uran, Uran, Maharashtra for the purpose of export. According to the applicant, without their knowledge, the respondent is attempting to export the vehicle to a foreign Country. The applicant was constrained to file a Writ Petition in W.P.No.19142 of 2023



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before the Bombay High Court and the Bombay High Court by its order dated 20.07.2023 was also pleased to grant an ad-interim injunction in favour of the applicant. The said injunction order continues till date.

6.Under the terms and conditions of the loan agreement, the respondent shall not alienate/encumber the construction equipment, morefully described in the schedule to the Judges Summons without the written consent of the applicant. According to the applicant, the respondent has committed breach of contract by attempting to export the construction equipment to a foreign Country. Only under those circumstances, this application has been filed by the applicant under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of the applicant's own employee as a Receiver to repossess the vehicle. As observed earlier, the applicant's own employee cannot be appointed as a Receiver as he is not an officer of this Court.

7.An additional typed set of paper has also been filed by the applicant which is dated 15.09.2023 and as seen from the additional typed set of papers, Summons have been issued by the Customs Authority to the



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respondent under Section 108 of the Customs Act, which is dated 05.07.2023 based on the complaint given by the applicant before the Customs Authority with regard to the vehicle hypothecated by the respondent with the applicant. The respondent has also chosen not to enter appearance in this application, despite receipt of the notice.

8. A *prima facie* case, balance of convenience and irreparable hardship have been established by the applicant. Being a construction equipment, having high value, the applicant's interest over the same will have to be protected. Hence, this Court, after giving due consideration to the contents of the affidavit filed in support of this application as well as the documents filed along with the same, is inclined to appoint an Advocate Commissioner to repossess the vehicle morefully described in the schedule to the judges summons.

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

a)Ms.J.Lavanya, Advocate, having Office address at No.295, New Additional Law Chambers, 2nd Floor, High Court Building, Chennai - 600



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104, Mobile No.8667408068 is appointed as an Advocate Commissioner to repossess the construction equipment morefully described in the schedule to the judges summons;

b)The Advocate Commissioner shall be paid an initial remuneration of Rs.25,000/- 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 travel expenses shall be paid by the applicant to the Advocate Commissioner for executing the warrant of Commission.

c)The Advocate Commissioner is permitted to obtain police aid and break open of the premises, in case, the construction equipment is kept in a locked premises in the presence of the police after taking a proper inventory;

d)The applicant is 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.

e)The Advocate Commissioner shall file a report before this Court on the next date of hearing.



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In terms of the aforementioned directions, this application is disposed of. Post the matter for reporting compliance on 13.10.2023.

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15.09.2023

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