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Arb.Appln. No. 2 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Arbitration Application No. 2 of 2024

M/s. Tata Capital Financial Services Limited

Having its registered Office at

11th Floor, Tower A, Peninsula Business Park,

Ganpatrao Kadam Marg,

Lower Parel, Mumbai – 400013.

Having one of its Branch Office at

Centennial Square, 1st Floor, 6A,

Dr Ambedkar Salai, Kodambakkam,

Chennai -600024,

Represented by its Authorised Signatory

Mr.D.Kalai Arasan

..Applicant

Vs

Akhil Ramachandran

..Respondent

Prayer: Application is filed under Section 9 of the Arbitration and Conciliation Act, 1996 to appoint an advocate commissioner to seize and deliver the asset Hyundai -Eon Magna BSIV Car bearing Registration KL-44-E-9399, Engine No. G3HAHM527293, Chasis No. MALA351ALHM573573H available at the respondent's premises or wherever found and permit the advocate commissioner to obtain police aid and to break open the premises or to pass further or other orders.

For Applicant : M/s.M.Nagalakshmi

For Respondent : No Appearance



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ORDER

This Application has filed under Section 9 of the Arbitration and Conciliation Act, 1996 (herein after referred as 'the Act')to appoint an advocate commissioner to seize and deliver the Asset Hyundai -Eon Magna BSIV Car bearing registration No. KL-44-E-9399.

2. The case of the applicant is that the respondent borrowed a sum of Rs. 2,58,079/- and executed a Loan-cum- Hypothication agreement dated 11.08.2022. It is agreed by the respondent to pay installments at the rate of 15.51 % per annum in 48 months, the installment commencing from 05.09.2022 to 31.08.2026. As per the agreement, the respondent has not paid all the installments as of today four installments are due and payable by the respondent. As the respondent committed default in repayment of loan amount, the applicant has recalled the loan facility in entirety and issued a loan recall notice dated 25.02.2023. Despite the said notice, the respondent has failed to settle the loan amount. Hence as per the agreement, in the event of any dispute, the parties aggrieved has to go for arbitration, hence the



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present application for interim measure for seizure of vehicle is filed under

Section 9 of the Act.

3. Heard the learned counsel for the applicant and perused the entire materials.

4. The interim measure provided under Section 9 of the Act is immediate and to safeguard the interest of the parties who seek any interim orders and they must exhibit the manifest intention to arbitrate the issue. The crux of the dispute is with regard to the default in payment of the loan amount. According to the petitioner, only four installments is due payable by the respondent and the loan was recalled as early on 25.02.2023. Despite noticing the fact that the respondent has not paid any amount for more than a year, the petitioner has not shown manifest intention to arbitrate the issue, rather they come forward for interim measure after a period of one year.

5. Such being the position, when the petitioner without seeking reference to resolve the actual dispute, cannot take advantage under Section



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9 of the Act for interim measure. The very object of Section 9 of the Act is that any interim order is passed before the commencement of arbitral proceedings, the arbitral proceedings shall be commenced within a period of 90 days from the date of such order or within such further time as the Court may determine. Therefore without exhibiting any intention to refer the dispute to the arbitration by way of interim measures, the petitioner cannot seek permanent protection by way of seizure of vehicle. Accordingly, this Court finds that the petitioner has not made out his case to grant any interim measure under Section 9 of the Act without exhibiting manifest intention to arbitrate the proceedings.

6. Accordingly, the application is dismissed. It is open to the petitioner to take steps to appoint an arbitrator as per law.

12.02.2024

Internet : Yes/No
Index : Yes/No
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N. SATHISH KUMAR, J.

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