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Arb.Appln.No.534 of 2024



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K.KUMARESH BABU, J.

This application has been filed for an order of appointment of an Advocate Commissioner to seize and deliver the Asset “TATA HITACHI ZX 370 LCH” Construction Equipment Machine No.THEDD1L0T00001875 available at the Respondent's premises or wherever found and permits the Advocate Commissioner to obtain police aid and to break open the premises.

2. The learned counsel appearing for the applicant would submit that the applicant provided a loan to the respondents for the purchase of the aforesaid vehicle and also a Loan Agreement had also been entered by the respondents with the applicant on 12.10.2023. The brief details in nutshell are as follows:

S.No.	Particulars	Remarks
1	Name of the Lender	Applicant
2	Name of the Borrower	First Respondent
3	Name of the Co-Borrower	Second Respondent
4	Date of the Loan Agreement	12.10.2023
5	Loan amount	Rs.1,00,81,543/-
6	No. of installments	47 Instalments @ Rs.2,65,000/-
7	First installment	10.11.2023
8	Last installment	10.09.2027

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9	Notice	13.05.2024
10	Reply to the Notice	Nil
11	Rate of interest	11.00%
12	Amount claimed	Rs.95,03,563.96/-
13	Arbitration proceedings initiated	Not yet

3. The learned counsel for the applicant further submits that the respondents, having availed the loan, failed to repay the same. He would submit that the hypothecated vehicle is a movable asset and if it is kept in idle condition, it would get damaged and its value also gets deteriorated and hence he would urge this Court to appoint an Advocate Commissioner to seize and handover the vehicle morefully described in the schedule to the Judges summons available at the respondents' premises to the applicant bank, in order to make the security effective and the money in dispute in arbitration is fully secured by way of sale of the vehicle in public auction after following due process of law.

4. Upon considering the facts and circumstances of the case and the submissions made by the learned counsel for the applicant, this Court is satisfied that the applicant has made out a case in its favour and accordingly, **Mr.S.Malayappan, Advocate, having office at No.36,**

Law Chamber, High Court Buildings, Chennai- 600 104, Mobile

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No.9841845430, is appointed as the Advocate Commissioner to seize



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the Asset “TATA HITACHI ZX 370 LCH” Construction Equipment Machine No.THEDD1L0T00001875 and deliver it to the custody of the Applicant, available at the Respondents' premises or wherever found and with whomsoever it is found and hand over the same to the custody of the applicant. He shall be paid his initial remuneration of Rs.30,000/- (Rupees Thirty Thousand Only) in advance. The expenses towards his travel and stay shall be defrayed by the applicant. The said initial remuneration shall be paid to the Advocate Commissioner within a period of two weeks from the date of receipt of communication from him.

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 break open of a lock is required the Advocate Commissioner shall do so in the presence of the police personnel who will counter sign the record evidencing the break open of the lock and to re-lock the premises. If the Advocate Commissioner find any difficulty with the jurisdictional police, he is at liberty to approach Superintendent of Police, who shall provide all



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necessary assistance to the Advocate Commissioner at the time of seizure of the vehicle. After the seizure, the vehicle is to be handed over to the applicant or to their representative, after taking inventories.

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6. Considering the fact that the respondents had taken a loan for the purchase of vehicle to provide themselves and their family a livelihood. The applicant shall grant the respondents a minimum period of four (4) weeks time to regularise the loan by payment of the defaulted amounts within the said period and if the respondents regularised their loan within the period expected by them, then the applicant shall return the vehicle to the respondents. This direction is issued considering the equity for the reason that the respondents had taken the loan only to eke out their livelihood.

7.Issue Notice to the respondents returnable by 14.10.2024.

Private notice also permitted.

8.List the case on 14.10.2024 for filing of the report of the Advocate Commissioner.

05.09.2024



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