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Arb.Appln.No.169 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.01.2025**

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THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

Arb. Appln. No.169 of 2025

M/s. HDB Financial Services Limited
Having one of its branch office at: 4th Floor,
Loyal Towers, No.68/2, Greams Road,
Chennai-600 006.
Rep. by its Authorised Signatory,
Mr.P.Saravanan

... Applicant

vs.

J.Edwin Thalabathy

... Respondent

PRAYER: This Arbitration Application filed under ORDER XIV RULE 8 OF O.S. RULES READ WITH SEC 9 (II) (d) & (e) OF ARBITRATION AND CONCILIATION ACT 1996, to appoint an Advocate Commissioner to seize and deliver the Asset HYUNDAI CRETA 1.6 CRDI Motor (LMV) bearing Registration No.TN-09-CK-2651, Chasis No.MALC381ULHM287451, Engine No. D4FBHM377482 available at the Respondent's premises or wherever found and permit the Advocate Commissioner to obtain police aid and to break open the premises.

For Applicant : Mr.M.Arunachalam



ORDER

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This Application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking to appoint an Advocate Commissioner to seize and deliver the Asset HYUNDAI CRETA 1.6 CRDI Motor (LMV) bearing Registration No.TN-09-CK-2651, Chasis No.MALC381ULHM287451, Engine No. D4FBHM377482 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 respondent entered into a loan agreement dated 26.10.2022 for purchase of the asset, morefully described in the schedule to the Judges Summons. Under the loan agreement, the total loan amount was repayable by the respondent to the applicant in 47 monthly installments commencing from 04.12.2022.

3. The learned counsel for the applicant submits that the respondent has availed the loan and failed to repay the same. Hence, the applicant has initiated the arbitration proceedings in accordance with the Arbitration Clause and pursuant to which, Award was passed by the learned Arbitrator in Arbitration Case No.ARC/HDB/44245 dated



03.01.2024. As per the award, the applicant is entitled to repossess the asset, morefully described in the schedule to the Judges Summons. The applicant has expressed its difficulty to repossess the asset on its own.

4. He would further submit that if the hypothecated asset 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 asset more fully described in the schedule to the Judge's Summons, available at the respondent's premises to the applicant, in order to make the security effective and so that the money in dispute in arbitration is fully secured by way of sale of the asset in public auction after following due process of law.

5. Upon considering the facts and circumstances of the case and the submissions made by the learned counsel for the applicant, this Court is inclined to appoint an Advocate Commissioner. Accordingly, this Application is ordered with the following directions:

a) Ms.C.PUSHPAVALLI, Enroll No.4148 of 2012, Advocate having address at Womens Lawyers Association, High Court Building, Chennai & #518, 26th Block, S.M.Nagar, Vysarpadi,



Chennai -39, Cell:90031 62793 is appointed as an Advocate

Commissioner to repossess the asset, which is more fully described in the schedule to the Judges Summons viz., HYUNDAI CRETA 1.6 CRDI Motor (LMV) bearing Registration No.TN-09-CK-2651, Chasis No.MALC381ULHM287451, Engine No. D4FBHM377482 from the respondent or wherever it is available and handover the same to the applicant by way of interim custody;

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

c) 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.

d) If the Advocate Commissioner finds any difficulty with the jurisdictional police, she is at liberty to approach Superintendent of Police, who shall provide all necessary assistance to her at the time of seizure of the asset.

e) The Advocate Commissioner shall be paid her initial remuneration of Rs.30,000/- (Rupees Thirty Thousand only) within a



period of six weeks 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;

6. Notice to the respondent returnable by 17.03.2025. Private Notice is also permitted.

7. Post the matter **on 17.03.2025 'for reporting compliance'.**

28.01.2025

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,

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