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Arb Appln No.727 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-07-2025

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THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb. Appln. No.727 of 2025

M/s.Shrinithi Capital Private Ltd.,
Represented by its Chief Manager
Mr.R.Selvam,
at 2nd Floor, 2A Mookambika Complex,
No.4, Lady Desika Road, Mylapore,
Chennai 600 004.

Applicant

Vs

1 M.Eshwar
2 M.Mohan

Respondents

Prayer: Arbitration Application is filed under Order XIV Rule 8 of O.S.Rules r/w. Section 9 (ii) (b) and (e) of Arbitration and Conciliation Act, 1996, praying to appoint an Advocate Commissioner with direction to seize the Schedule mentioned Vehicle which is lying under the custody of the Respondent or his men, agent, Servants or anyone claiming under them from the premises of 1st Respondent at C202 Raheja Regency, No.147, Santhome High Road, Raja Annamalaipuram, Chennai 600 028, or at any other place where the scheduled asset is found, with the police aid and by breaking open locks if necessary and to take the same into his custody and sell the same at fair market price.

For Applicant:

Mr.K Sendurpandi



ORDER

As directed by this Court, the applicant has effected Substituted Service on the Respondents by effecting paper publication. The paper publication has been enclosed along with the Affidavit of service. Hence, the Respondents are set exparte by this Court.

2. The respondents are defaulters in repayment of the loan to the applicant. The loan agreement dated 29.12.2023 empowers the applicant to repossess the vehicle from the respondents in case the respondents commit default in repayment of the loan. As on 22.04.2025, a sum of Rs.39,69,837/- is due and payable by the respondents to the applicant, as is seen from the statement of account filed along with this application. As on the date of filing of the application, the respondents are in arrears of Rs.24,44,448/- as is seen from the affidavit filed in support of the petition.

3. The applicant has expressed their difficulty to appoint the Advocate Commissioner on its own. They have also expressed their willingness to go for arbitration in accordance with arbitration clause contained in the loan agreement, dated 29.12.2023. The applicant has



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already recalled the loan of the respondents. This Court after giving due consideration to the contents of the affidavit filed in support of the application, is of the considered view, a *prima facie* case has been made out by the applicant for the appointment of an Advocate Commissioner by this Court to repossess the vehicle from the respondents or wherever available. To enable the respondents to take back possession of the vehicle from the Advocate Commissioner, they must be put on terms for getting back the vehicle from the applicants after re-possession. In order to strike a balance, the following order is passed by this Court:

a) Ms.M.Kavitha, Advocate, having office at Women lawyers Association, high Court Buildings, Chennai 600 104 (Mob. No.9952793553) is appointed as the Advocate Commissioner to re-posses the vehicle, morefully described in the schedule to the Judges Summons from the respondents from their premises or wherever available;

b) The Advocate Commissioner, after re-possessing the vehicle, shall handover interim custody of the same to the applicant, who shall keep it in their safe custody;

c) The Advocate Commissioner, immediately after re-possessing the subject vehicle, shall intimate the respondents either through Registered



Post with Acknowledgment Due (RPAD) or by hand delivery through a written communication that the arrears of installments work out to Rs.39,69,837/-;

d)The respondent, on payment of Rs.39,69,837/- to the applicant within a period of three days from the date when the subject vehicle was re-possessed, is entitled for return of the seized vehicle. On receipt of the sum of Rs.39,69,837/- within the stipulated time as stated supra, the applicant shall re-deliver the subject vehicle back to the respondents with proper acknowledgment and the advocate commissioner shall also render proper assistance for the same;

e)The applicant shall initiate arbitration in accordance with the arbitration agreement contained in the contract within a period of 90 days from today. In case, the applicant fails to initiate arbitration within the stipulated time, the order passed by this Court today shall stand automatically vacated and the re-possessed vehicle shall also be redelivered back to the respondents by the applicant unconditionally;

f)In case, the Advocate Commissioner requires Police assistance due to any law and order problem or due to any obstruction caused by the respondents or by any third party, while re-possessing the vehicle, the



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advocate commissioner is at liberty to seek police assistance from the concerned police station and the police department shall grant police protection accordingly. In case, break open of the premises, where the vehicle is located, is required, the Advocate Commissioner shall break open the premises in the presence of the police and take an inventory and thereafter re-posses the vehicle;

g)The Advocate Commissioner shall be paid an initial remuneration of Rs.25,000/- and on receipt of the same, the advocate commissioner shall proceed to execute this order. All the boarding, lodging and travelling expenses for the Advocate Commissioner shall be borne by the applicant.

4. With the aforesaid directions, this application stands disposed of.

5. Post the matter for reporting compliance on 07.08.2025.

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ABDUL QUDDHOSE,J.,

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