

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb Appln No. 824 of 2025

1. Tata Capital Ltd,
Rep.by its Associate Legal Remedial,
Mr.R.Kamalakannan,
1st Floor, Centennial Square, 6A -Dr
Ambedkar Salai, Kodambakkam,
Chennai 600 024

Applicant(s)

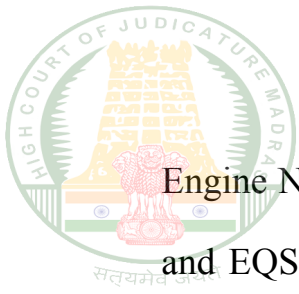
Vs

1. Vinoth kumar. M,
6 194 Chinnattipalayam Kodiveri,
Sathyamangalam, Erode,
Landmark - Near Registered Office,
Periyar, Tamilnadu -638 503.

Respondent(s)

PRAYER

This Application has been filed seeking for appointment of Advocate Commissioner to seize and deliver the Hydraulic Excavator manufactured by Schwing Stetter (India) Pvt Ltd - CEQ Model XE-140i 83500137 bearing



Engine No.22L84996984 Chassis No.XUGA140NCNKA00319 MC SLNO.474
and EQSL NO.810598800 with all accessories fitted to the vehicle lying at 6

194 Chinnattipalayam Kodiveri, Sathyamangalam Erode, Landmark - Near
Register Office, Periyar, Tamilnadu or morefully described hereunder, with
police aid or break open the premises or from wherever found and handover the
same to the applicant.

For Appellant(s): M/s.N.K.Vanan

For Respondent(s): Ms.M.Karthik
Ms. R. Radhika, Advocate
Commissioner

ORDER

This Application has been filed for appointment of Advocate
Commissioner to seize and deliver the vehicle in possession of the respondent
and to hand over the same to the applicant.

2.When this application came up for hearing on 27.06.2025, this Court
passed the following order:

"This application has been filed under Section 9 of the
Arbitration and Conciliation Act, seeking for appointment of



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an Advocate Commissioner by this Court to repossess the vehicle, morefully described in the schedule to the judges summon from the respondent or wherever available.

2.The respondent is a defaulter in re-payment of the loan to the applicant. The respondent had availed loan for the purchase of vehicle. As on date, the respondent is in arrears of 3 installments amounting to Rs.3,13,365/-. As per the statement of account filed along with this application, a sum of Rs.25,06,091/- is due and payable by the respondent, which includes arrears of installments, future installments and other charges payable to the applicant as per the terms and conditions of the Loan Agreement dated 28.12.2022. The applicant has already recalled the loan through its Loan Recall Notice dated 05.09.2024. The Loan Agreement dated 28.12.2022 contains an arbitration clause. Under the loan agreement, the applicant is empowered to re-possess the vehicle from the respondent in case the respondent commits default. The applicant has expressed its difficulty in re-possessing the vehicle on their own. Only under the said circumstances, the applicant has filed this application seeking for appointment of an Advocate Commissioner by this Court. In the loan agreement, there exists an arbitration



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clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause.

3.Supporting documents have been filed by the applicant in support of this application. Since a prima facie case has been made out by the applicant for appointment of an Advocate Commissioner, this Court is inclined to appoint an Advocate Commissioner as prayed for in this application. To enable the respondent to take back possession of the vehicle from the Advocate Commissioner, they must be put on terms for getting back the vehicle from the applicant after re-possession. In order to strike a balance, the following order is passed by this Court:

a)Ms.R.Radhika, Advocate, having office at No.256, New Additional Law Chamber, High Court Buildings, Chennai - 600 104 (Mob. No.88704 12670) is appointed as the Advocate Commissioner to re-posses the vehicle, morefully described in the schedule to the Judges Summons from the respondent from his 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;



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c)The Advocate Commissioner, immediately after re-possessing the subject vehicle, shall intimate the respondent 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.3,13,365/-;

d)The respondent, on payment of Rs.3,13,365/- 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.3,13,365/- within the stipulated time as stated supra, the applicant shall re-deliver the subject vehicle back to the respondent 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 respondent by the applicant unconditionally;



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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 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.

Notice to the respondent returnable by 04.08.2025.

Private Notice is also permitted."

3.Pursuant to the above order, the Advocate Commissioner has seized the vehicle and handed over the same to the applicant and a report has been filed by



the Advocate Commissioner in this regard.

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4.The learned counsel appearing on behalf of the respondent submitted that the respondent required a weeks time to settle the amount as was directed by this Court in the earlier order passed on 27.06.2025 in order to get back the vehicle.

5.The Advocate Commissioner has also filed a memo seeking for additional remuneration.

6.In the light of the earlier order passed on 27.06.2025, there is nothing further to adjudicate in this case.

7.The respondent is given a weeks time to settle the said amount as was directed by this Court in the earlier order dated 27.06.2025. On such payment, the applicant shall re-deliver the vehicle back to the respondent.



8. Considering the memo filed by the Advocate Commissioner alongwith the report, this Court is inclined to direct the applicant to pay additional remuneration of Rs.25,000/- to the Advocate Commissioner.

9. This Application is disposed of, accordingly.

01-09-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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Tamilnadu 638 503.



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N.ANAND VENKATESH J.
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