



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 06-10-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb Appln No. 836 of 2025

M/s.Cholamandalam Investment And
Finance Company Limited
Chola Crest, C 54 and 55, Super B-4,
Thiru Vi Ka Industrial Estate, Guindy,
Chennai 600 032 represented by its
Authorised Signatory

Applicant

Vs

Mr.Jitesh Dattatray Tupe
S/o.Dattatray,
Flat No.002, Silver Chamber Tupe
Wasti S.No.106/1, Solapur Road, Next
to Yash Honda Show Room, Hadapsar,
Pune, Maharashtra 411 013.

Respondent

PRAYER

To appoint an Advocate Commissioner to seize and deliver the construction equipment to applicant which is more fully described in the Schedule to the Judges summons which is lying in the custody of respondent or respondent's men, agents, servants from respondent premises or wherever found with Police aid and break open if necessary if necessary.



For Applicant : Mr.D.Pradeep Kumar

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ORDER

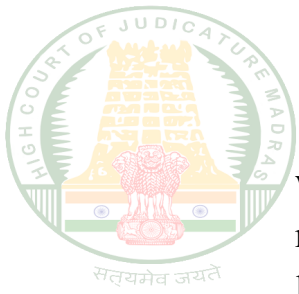
This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity, hereinafter referred to as “the Act”) for appointment of an Advocate Commissioner for seizing the construction equipment in the custody of the respondent, if necessary, with police protection and by breaking open the premises.

2. When this application came up for hearing on 30.06.2025, this Court passed the following order:-

“This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Advocate Commissioner to seize and take possession of the vehicle/asset morefully described in the schedule to the Judges Summons from the respondent or wherever it is available.

2. The applicant is a Non Banking Financial Institution. The applicant has lent money to the respondent under the Loan Agreement, dated 18.03.2023. The respondent had availed loan from the applicant for the purchase of vehicle/asset morefully described in the schedule to the Judges Summons.

3. The respondent is a defaulter in the repayment of the loan to the applicant. Supporting documents have been filed by the applicant to substantiate the same. As on date, the respondent is in arrears of 13.99 installments, which



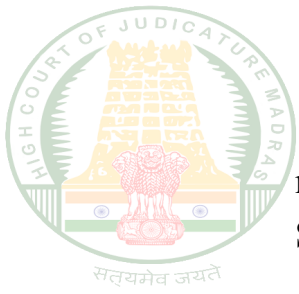
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works out to Rs.10,22,500/-. The applicant has also recalled the loan granted to the respondent through their loan recall notice dated 07.02.2025. As seen from the Statement of Account, a sum of Rs.36,81,516.86/- is due and payable by the respondent to the applicant which includes future installments, arrears of installments, penal interest and other charges payable as per the terms and conditions of the contract. The applicant is empowered to repossess the vehicle/asset from the respondent, as per the terms of the said loan agreement, in case, he commits default in the repayment of the loan. The applicant claims that they are having difficulty in repossessing the vehicle/asset on their own. Only under those circumstances, they have filed this application seeking for appointment of an Advocate Commissioner to repossess the vehicle/asset from the respondent or wherever available. The Loan Agreement, dated 18.03.2023 contains an arbitration clause. The applicant has already initiated arbitration in accordance with the arbitration clause by issuing notice to the respondent to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996.

4.This Court is of the considered view that a prima facie case has been made out by the applicant for appointment of an Advocate Commissioner. Once the vehicle/asset is repossessed by the Advocate Commissioner, to enable the respondent to use the vehicle/asset once again, he must be put on terms for getting back the vehicle/asset from the applicant after re-possession. In order to strike a balance, the following order is passed by this Court:

a) Mr.R.Venkatesh, Advocate, Mobile No.6381-696389, e-mail: venkateshr02@outlook.com, is appointed as the Advocate Commissioner to re-posses the vehicle/asset



morefully described in the schedule to the Judges Summons from the respondent or wherever it is available;

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b) The Advocate Commissioner is permitted to obtain the police aid whenever required and he is also permitted to break open the premises in case the vehicle/asset is kept in a locked premises in the presence of the police after taking proper inventory.

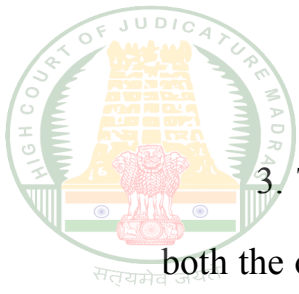
c) On repossession of the subject vehicle/asset, the Advocate Commissioner shall send a Communication to the respondent intimating that a sum of Rs.10,22,500/- is due and payable by the respondent to the applicant in respect of the aforesaid loan agreement.

d) On receipt of such intimation, the respondent shall pay the aforesaid amount within a period of three days from the date of receipt of the communication from the Advocate Commissioner and on payment of such sum, the applicant shall hand over the vehicle/asset back to the respondent and the Advocate Commissioner shall co-operate with the applicant for the same.

e) The Advocate Commissioner shall be paid an initial remuneration of Rs.25,000/- by the applicant, within a period of one week from the date of receipt of a copy of this order. All the boarding, lodging and travelling expenses for the Advocate Commissioner shall be borne by the applicant.

5. Notice to the respondent, returnable by 04.08.2025. Private notice is also permitted.

Post the matter on 04.08.2025.”



3. The matter was thereafter listed for hearing on two occasions and on both the occasions, the learned Advocate Commissioner sought for extension of time for execution of warrant, since the vehicle was not able to be traced.

4. The private notice that was sent to the respondent has been returned with an endorsement “left”. The notice has been sent only to the address which is mentioned in the loan agreement dated 23.08.2023. In fact, the earlier notice dated 07.02.2025 was also issued to the very same address of the respondent. It is clear from the above that the respondent is evading service. Hence there is a deemed service on the respondent and the respondent is neither present nor represented through counsel.

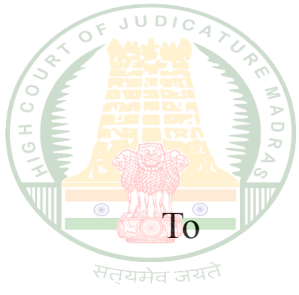
5. The learned counsel for applicant submitted that the initial remuneration has been paid to the learned Advocate Commissioner.

6. In view of the above, in the place of the Advocate Commissioner, Mr. Manas Dange, Regional Receivables Manager is appointed as Receiver for seizing the construction equipment from the respondent or wherever it is found and by breaking open the premises, if required, with police aid.

7. This application stands disposed of in the above terms.

06-10-2025

SS



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1. Jitesh Dattatray Tupe

S/o. Dattatray, Flat No.002, Silver
Chamber Tupe Wasti S.No.106/1,
Solapur Road, Next to Yash Honda
Show Room, Hadapsar, Pune,
Maharashtra 411 013.



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**N.ANAND
VENKATESH J.**

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