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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-10-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb Appln No. 867 of 2025

Tata Capital Limited by its Associate
Legal Remedial R.Kamalakkannan
Having its office at
1st Floor, Centennial Square
6A-Dr Ambedkar Salai, Kodambakkam
Chennai 600 024

Applicant

Vs

Mr.Vinoth Myilsamy
6 194 Chinnattipalayam Kodiveri
Sathyamangalam
Landmark Near Kovil Periyar
Tamil Nadu 638 503

Respondent

PRAYER

To pass an order appointing an Advocate Commissioner to seize and deliver the asset EXCAVATOR XE215i-KLC 83779006 manufactured by XUZHOU CONSTRUCTION MACHINERY GROUP IbyE, bearing engine no.32L84556135, Chassis No.XUGA215BPPKA00546, MC SLNO: 606 and EQ SLNO: 812394300 situated at D No.6 194, Chinnattipalayam Kodiveri Sathyamangalam Landmark-Near Kovil Periyar, Tamil Nadu PINCODE 638 503 or wherever it is found morefully described hereunder, with police aid or break open the premises from wherever found and handover the same to the Applicant.

For Applicant: Mr.N.K.Vanan

For Respondent: Ms.B.Divya
Advocate Commissioner

ORDER



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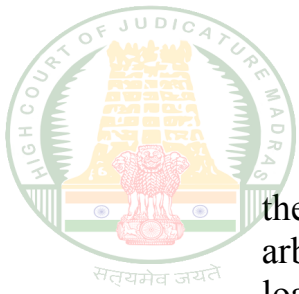
This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 for appointment of an Advocate Commissioner to seize the subject equipment/machinery in the custody of the respondent or wherever found, if necessary, with police protection and by breaking open the premises and deliver the same to the applicant.

2. When this application came up for hearing on 02.07.2025, this Court passed the following order:-

“This application has been filed under Section 9 of the Arbitration and Conciliation Act, seeking for appointment of an advocate commissioner to repossess the equipment from the respondent or wherever available.

2. The applicant is a non banking financial institution. They lent money to the respondent under an agreement for loan cum hypothecation dated 30.11.2023. The respondent has committed default in the repayment of the loan as per the said agreement. The applicant has also recalled the loan through their loan recall notice dated 05.09.2024. They have also filed a statement of accounts dated 03.06.2025. As seen from the same, Rs.47,17,544/- is due and payable by the respondent to the applicant. The said amount includes the future installments, penal interest and other incidental charges. However, as on date, the respondent is in arrears of installments, which amounts to Rs.8,08,013/-.

3. Under the agreement for loan cum hypothecation dated 30.11.2023, the applicant is empowered to repossess the equipment from the respondent in case they commit default in the repayment of the loan. The applicant has expressed its difficulties to repossess the equipment on their own. Under those circumstances, they have filed this application, seeking for appointment of an advocate commissioner to repossess



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the equipment. The applicant has also undertaken to initiate arbitration in accordance with clause 13 of the agreement for loan cum hypothecation dated 30.11.2023.

4. This Court, after giving due consideration to the averments contained in the affidavit filed in support of this application and after giving due consideration to the documents filed along with this application, is of the considered view that since the respondent is a defaulter in the repayment of loan, this Court is inclined to appoint an advocate commissioner as prayed for in this application. However, in order to enable the respondent to run the equipment even after repossession by the advocate commissioner, this Court is putting the respondent on terms. According to the applicant, a sum of Rs.8,08,013/- is due and payable by the respondent to the applicant towards arrears of installments i.e., more than six installments have not been paid by the respondent to the applicant till date.

5. For the foregoing reasons, this Court issues the following directions:

- a) Ms.B.Divya, Advocate having address at No.3, Yevaal Street, G.G.Nagar, Mogappair East, Chennai - 600 107 (Mob. No.99416 72127) is appointed as the advocate commissioner to re-posses the equipment morefully described in the schedule to the Judges Summons from the respondent from their premises or wherever available;
- b) The advocate commissioner after re-possessing the equipment, 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 equipment, 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 works out to Rs.8,08,013/-;
- d) The respondent on payment of Rs.8,08,013/- to the applicant within a period of one week from the date when the subject equipment was re-possessed, is entitled for return



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of the seized equipment, provided an undertaking is given by the respondent that they shall pay the future installments on the due dates, without any default. On receipt of the sum of Rs.8,08,013/- within the stipulated time as stated supra, the applicant shall redeliver the subject equipment back to the respondent with proper acknowledgment and the advocate commissioner shall also render proper assistance for the same;

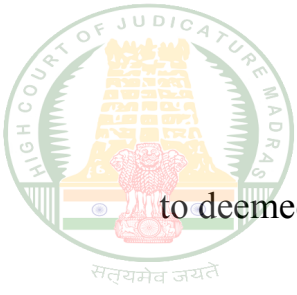
e) The applicant shall initiate arbitration in accordance with the arbitration agreement contained in the contract within a period of 90 days from today. In case, the applicant fails to initiate arbitration within the stipulated time, the order passed by this Court today shall stand automatically vacated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

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.

6. Notice to the respondent, returnable by 06.08.2025. Private Notice is also permitted ”

3. When the matter came up for hearing on 06.08.2025, since the notice sent to the respondent was returned with an endorsement 'unclaimed' amounting



to deemed service, this Court extended the time for execution of warrant.

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4. When the matter was taken up for hearing today, the learned counsel for applicant submitted that the Advocate Commissioner is not able to seize the equipment/machinery and the applicant is in the process of finding out the whereabouts of the equipment/machinery.

5. It is clear from the above that the apprehension raised on the side of the applicant that the respondent is trying to secret the equipment/machinery is prima facie established.

6. In view of the above, in the place of the Advocate Commissioner, Mr.R.Kamalakaran, Mobile No.99404 26006, is appointed as Receiver for seizing the subject equipment/machinery from the respondent or wherever it is found and by breaking open the premises, if required, with police aid.

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

08-10-2025

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To

Mr.Vinoth Myilsamy
6 194 Chinnattipalayam Kodiveri



Sathyamangalam
Landmark Near Kovil Periyar
Tamil Nadu 638 503

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**N.ANAND
VENKATESH J.**

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