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Arb. Appln.No.1010 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2025

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THE HON'BLE Mr. JUSTICE N. ANAND VENKATESH

Arb. Appln.No.1010 of 2025

M/s.Smart Credit India Finance Limited,
rep. by its Authorised Signatory
K.Jamal Basha

.. Applicant

vs

Henry Premkumar P.

.. Respondent

Prayer: To pass an order of appointment of an Advocate Commissioner to seize and deliver the Vehicle/Machinery MARUTI SUZUKI INDIA LTD Swift Dzire Tour Diesel BS IV bearing Vehicle Registration No.TN22DA5331, Vehicle Engine No.D13A5135315 and Vehicle Chassis No. MA3FSEB1S00494222 to the custody of the Applicant, available at the Respondent premises or wherever found and with whomsoever it is found and permit the Advocate Commissioner to obtain Police aid and to break open the premises.

For applicant : Ms.Meera Gnanasekar



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ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 for appointment of an Advocate Commissioner to seize and deliver the vehicle to the applicant from the respondent.

2. When the matter came up for hearing on 28.07.2025, 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 repossess the vehicle 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 Hypothecation cum Loan Agreement, dated 20.01.2023. The respondent had availed loan from the applicant for the purchase of vehicle 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 twenty three (23) installments, which works out to Rs.2,89,294/-. The applicant has also recalled the loan granted to the respondent through their loan recall notice dated 28.12.2024. As seen from the Statement of Account, a sum of Rs.5,89,300/- 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.



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The applicant is empowered to repossess the vehicle from the respondent, as per the terms of the said Hypothecation cum 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 on their own. Only under those circumstances, they have filed this application seeking for appointment of an Advocate Commissioner to repossess the vehicle from the respondent or wherever available. The Hypothecation cum Loan Agreement, dated 20.01.2023 contains an arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause.

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 is repossessed by the Advocate Commissioner, to enable the respondent to use the vehicle once again, he 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.M.Gayathri, Advocate, having office at No.207, New Additional Law Chamber, Madras High Court, Chennai – 600 104, Mobile No.97105 19973, is appointed as Advocate Commissioner to repossess the vehicle morefully described in the schedule to the Judges Summons from the respondent or wherever it is available.

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

(c) On repossession of the subject vehicle, the Advocate



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Commissioner shall send a communication to the respondent intimating that a sum of Rs.2,89,294/- is due and payable towards the arrears of installment by the respondent to the applicant, in respect of the aforesaid Hypothecation cum 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 a communication from the Advocate Commissioner and on payment of such sum, the applicant shall handover the vehicle back to the respondent and the Advocate Commissioner shall co-operate with the applicant 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 the date of receipt of a copy of this order. 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.

(f) 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 and lodging expenses shall be borne by the applicant.

(g) Notice to the respondent through Court as well as privately returnable by 28.08.2025.'

3.Pursuant to the above order, the Advocate Commissioner has seized



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the vehicle and it has been handed over to the representative of the applicant.

4.When the matter came up for hearing on 09.09.2025, this Court recorded the fact that the vehicle has been seized and handed over to the representative of the applicant and directed the applicant to pay an additional remuneration of Rs.15,000/- to the learned Advocate Commissioner.

5.It is reported that the additional remuneration has been paid to the Advocate Commissioner. Notice that was sent to the respondent has been returned with an endorsement 'left'.

6.Considering the above development and the fact that the vehicle has already been handed over to the applicant, no further orders are required to be passed in this application.



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N. ANAND VENKATESH, J.
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7.This application is disposed of in the above terms.

23.09.2025

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