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Arb Appln Nos. 1062 & 1063 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb Appln Nos. 1062 & 1063 of 2025

1. M s Cholamandalam Investment and
Finance Co Ltd .,
Represented by its Authorized
Signatory Mr .D Arjun
Registered Office at: Chola Crest
3rd Floor C54 & C55, Super B 4
Thiru Vi Ka Industrial Estate, Guindy
Chennai 600032.

Appellant(s)

Vs

1. M s Aarya Engineering
D-180, Sector 10, Noida, Gautam
Buddha Nagar, Uttar Pradesh 201 301.

2.Mrs Anita Mishra

3.Mr Ritik Mishra

Respondent Nos.2 & 3 are residing at
C 3 Sector-22 Noida Gautam Buddha
Nagar, Uttar Pradesh 201 301



Respondent(s)

WEB COMMON PRAYER :

To pass an order of appointing an Advocate Commissioner to seize and deliver the Assets as detailed hereunder which is available at Respondent premises or wherever found and permit the Advocate Commissioner to obtain police aid and to break open the premises and hand over the same to the Applicant.

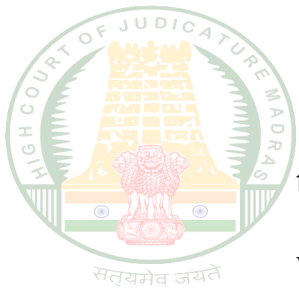
For Appellant(s): Mr.V.Balasubramani

ORDER

These applications have been filed for appointment of Advocate Commissioner to seize the vehicles from the respondent and to hand it over to the applicant.

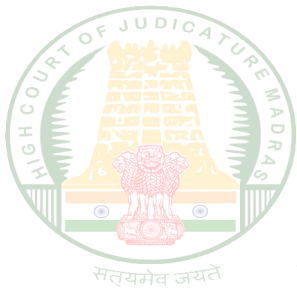
2.The applicant filed the earlier applications in A.Nos.509 and 510 of 2025 and an order came to be passed in these applications on 25.03.2025 and the same is extracted hereunder:

These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Advocate Commissioner to seize the equipments / machineries morefully described in the schedule



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to the respective Judges Summons from the respondents or wherever it is available. 2. The applicant is a Non Banking Financial Institution. The applicant and the respondents are one and the same in both these applications. The respondents have availed loan from the applicant under separate Loan cum Hypothecation Agreements, they are dated 25.02.2022 and 22.11.2022 for the purchase of respective equipments / machineries. According to the applicant, the respondents have committed default in re-payment of the loan. 3. According to the applicant, insofar as Arb. A. No.509 of 2025 is concerned, the respondents have paid as on date only 30 installments out of the total 36 installments payable by them. According to the applicant, the respondents have made payments belatedly. The applicant has also recalled the loan granted to the respondents through their loan recall notice dated 24.01.2025. Despite the same the respondents failed to settle the loan account. The applicant has filed statement of account dated 24.01.2025 along with Arb. Appln. No.509 of 2025, which reveals that a sum of Rs.7,88,475/- is due and payable by the respondents to the applicant, which includes future installments, arrears of installments, penal interest and other charges payable as per the contract. As on date, the respondents are in arrears of 6 installments, which works out to Rs.7,88,475/-.

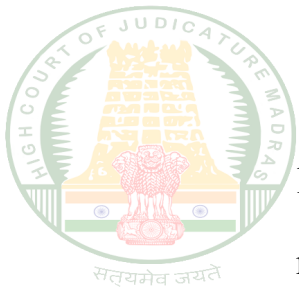


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4. According to the applicant, insofar as Arb. A. No.510 of 2025 is concerned, there were two Loans A/c. Nos. viz., PR00041226 and PR00041227 and the details pertaining to the said Loan A/c. Nos. are stated hereunder :-

a) With respect to Loan A/c. No.PR00041226, the respondents have paid as on date only 21 installments out of the total 27 installments payable by them. According to the applicant, the respondents have made payments belatedly. The applicant has also recalled the loan granted to the respondents through their loan recall notice dated 24.01.2025. Despite the same the respondents failed to settle the loan account. The applicant has filed statement of account, dated 24.01.2025 along with Arb. Appln. No.510 of 2025, which reveals that a sum of Rs.6,52,378/- is due and payable by the respondents to the applicant, which includes future installments, arrears of installments, penal interest and other charges payable as per the contract. As on date, the respondents are in arrears of 6 installments, which works out to Rs.6,52,378/-

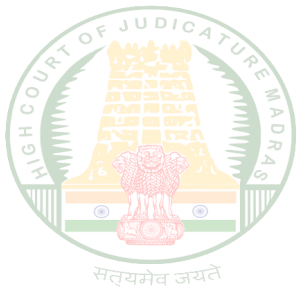
b) With respect to Loan A/c. No.PR00041227, the respondents have paid only 21 installments out of the total 27 installments payable by them. According to the applicant, the respondents have made payments belatedly. The applicant has also recalled the loan granted to the respondents through their



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loan recall notice dated 24.01.2025. Despite the same the respondents failed to settle the loan account. The applicant has filed statement of account, dated 24.01.2025 along with Arb. Appln. No.510 of 2025, which reveals that a sum of Rs.3,36,329/- is due and payable by the respondents to the applicant, which includes future installments, arrears of installments, penal interest and other charges payable as per the contract. As on date, the respondents are in arrears of 6 installments, which works out to Rs.3,36,329/-

5. The applicant is empowered to repossess respective equipments / machineries from the respondents, as per the terms of the respective loan agreements, in case, they commit default in the repayment of the loan. The applicant claims that they are having difficulties in repossessing the equipments / machineries on their own. Only under those circumstances, they have filed these applications seeking for appointment of an Advocate Commissioner to repossess the respective equipments / machineries from the respondents or wherever it is available. The aforesaid Hpothecation Agreements contains an arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause.



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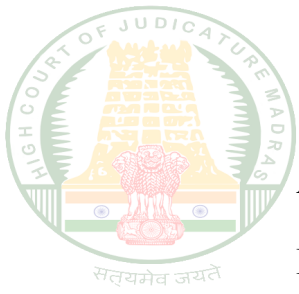


6.This Court is of the considered view that a prima facie case has been made out by the applicant for appointment of an Advocate Commissioner. Once the equipments / machineries are repossessed by the Advocate Commissioner, to enable the respondents to use the equipments / machineries once again, they must be put on terms for getting back the equipments / machineries from the applicant after repossession. In order to strike a balance, the following order is passed by this Court:

a)Mr. P.Kumar, Advocate having office at No.342, New Additional Law Chamer, Madras High Court Campus, Chennai – 600 104.(Mobile No.7397339003) is appointed as the Advocate Commissioner to re-posses the vehicle morefully described in the schedule to the respective Judges Summons from the respondents or wherever it is available;

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 is kept in a locked premises in the presence of the police after taking proper inventory.

c) On repossession of the subject equipments / machineries, the Advocate Commissioner shall send a Communication to the respondents intimating that insofar as



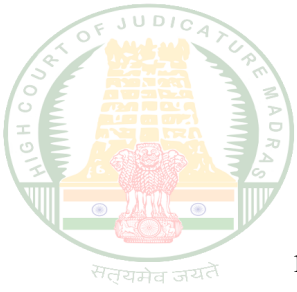
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Arb. Appln. No.509 of 2025 is concerned, a sum of Rs.7,88,475/- is due and payable by the respondents to the applicant and insofar as Arb. Appln. No.510 of 2025 is concerned, a sum of Rs.6,52,378/- for Loan A/c. No.PR00041226 and a sum of Rs.3,36,329/- for Loan A/c. No.PR00041227 are due and payable by the respondents to the applicant in respect of the aforesaid loan agreements.

d) On receipt of such intimation, the respondents 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 respective equipments / machineries back to the respondents 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 respondents by the applicant unconditionally;



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f) The Advocate Commissioner shall be paid an initial remuneration of Rs.40,000/- (Rs.20,000/- for each applications) 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.

7. Notice to the respondents returnable by 22.04.2025.
Private Notice is also permitted. Post the matter on 22.04.2025.

3.Pursuant to the above order, these applications came to be dismissed as withdrawn on 22.04.2025.

4.The present applications have been filed on the ground that the respondents made a part payment and that believing that the respondents will settle the entire amount, the earlier applications were withdrawn but however the respondents once again committed default in payment. Hence, the present applications have been filed for the same relief.



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5. In the considered view of this Court, the applicant took the risk of withdrawing the earlier applications since they had some understanding with the respondents. If the respondents have once again commit default, the applicant has to necessarily initiate arbitration proceedings. Already the trigger notice under Section 21 of the Arbitration and Conciliation Act, 1996, has been issued on 08.07.2025. In view of the same, it is left open to the applicant to take steps for appointment of the Arbitrator and file application under Section 17 of the Arbitration and Conciliation Act, 1996 and seek for the same relief. Except giving this liberty, no further orders can be passed in these applications.

10. These applications are disposed of in the above terms. No costs.

01-09-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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D-180, Sector 10, Noida, Gautam
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