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Arb Appln No. 1090 of 20



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. 1090 of 2025

M/s Sundaram Finance Ltd.,
No.21, Pattullos Road
Chennai 600 002
represented by its Authorised Signatory
Mr.R.Srinivasan

Applicant

Vs

M/s Marickar Plantations Private
Limited rep.by its Director
Mr.F.M.Shamier Marickar
No.41/3611, Old Railway Station Road
Banerji Road, Ernakulam
Kerala 682 018

Respondent

PRAYER

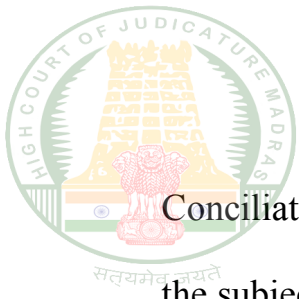
To pass an order of appointment of an Advocate Commissioner to seize and deliver the assets “Mercedes-Benz E220” bearing Registration No.KL-07-CN-0201, Engine No.65492080138771 and Chassis No.WDD2131046L0082670917 available at the respondent's premises or wherever found and permit the Advocate Commissioner to obtain police aid and to break open the premises.

For Applicant: Mr.M.Arunachalam

For Respondent: Mr.M.Suresh
Advocate Commissioner

ORDER

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 vehicle which is 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 11.08.2025, this Court passed the following order:-

“This application has been filed under Section 9 of the Arbitration and Conciliation Act, seeking for the appointment of an Advocate Commissioner by this Court to re-possess the vehicle from the respondent or wherever available.

2.The respondent is a defaulter in the repayment of loan to the applicant. As on date, a sum of Rs.10,15,560/- is due and payable by the respondent to the applicant. The respondent had entered into a loan agreement dated 10.11.2017 with the applicant. The period of the loan agreement has already come to an end.

3. The applicant has already initiated arbitration in accordance with the arbitration clause, contained in the contract and the arbitration is in progress. Before the arbitrator, the applicant has also filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 seeking for the very same relief that has been sought for in this application. Interim order was also passed by the arbitrator on 08.03.2025 under Section 17 of the Arbitration and Conciliation Act, 1996 appointing an Advocate Commissioner to re-possess the vehicle from the respondent or wherever available.

4. However, as seen from the affidavit filed in support of this application, the applicant has stated that they are unable to execute the order dated 08.03.2025 passed by the arbitrator and therefore, they were unable to re-possess the



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vehicle from the respondent or wherever available. The applicant categorically states that the vehicle could be re-possessed only if an order is passed by this Court in this application. Section 9(3) of the Arbitration and Conciliation Act, 1996, makes it clear that, once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

5. In the instant case, the applicant has established before this Court that they are unable to re-posses the vehicle from the respondent through an order passed by the arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. This Court is the considered view that a prima facie case has been made out by the applicant for the appointment of an Advocate Commissioner. The balance of convenience and irreparable hardship have also been established by the applicant. Hence, this Court has to necessarily appoint an Advocate Commissioner to re-possess the vehicle from the respondent or wherever available under Section 9 of the Arbitration and Conciliation Act, 1996.

6. Accordingly, the following directions are issued by this Court:

a) Mr. M. Suresh, Advocate, having office at 225, New Additional Law Chamber, 1 st Floor, High Court Building, Chennai – 600 104 (Mobile Nos. 99418 51584 & 86376 90649) is appointed as the Advocate Commissioner to re-posses the vehicle 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 vehicle, shall handover interim custody of the same to the applicant, who shall keep it in their safe custody;

c) 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 vehicle, the advocate commissioner



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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 are 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;

d)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.

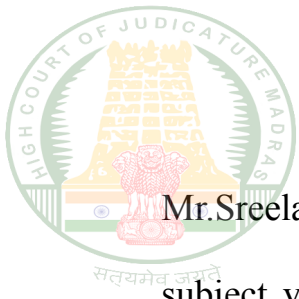
7. Notice to the respondent, returnable by 15.09.2025. Private Notice is also permitted.

8. Post the matter on 15.09.2025.”

3. The private notice sent to the respondent has been duly served and affidavit of service has also been filed. But the respondent is neither present nor represented through counsel.

4. It is brought to the notice of this Court that till date the Advocate Commissioner is not able to seize the vehicle and the applicant is in the process of finding out the whereabouts of the vehicle. Hence the apprehension raised on the side of the applicant that the respondent is trying to secret the vehicle is prima facie established.

5. In view of the above, in the place of the Advocate Commissioner,



Mr.Sreelal.S, Assistant Manager Legal is appointed as Receiver for seizing the subject vehicle from the respondent or wherever it is found and by breaking open the premises, if required, with police aid.

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

08-10-2025

SS

To

M/s Marickar Plantations Private
Limited rep.by its Director
Mr.F.M.Shamier Marickar
No.41/3611, Old Railway Station Road
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**N.ANAND
VENKATESH J.**

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