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Arb.Appln.No.1134 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 15.10.2025**

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Arbitration Application No.1134 of 2025**

Tata Capital Ltd  
By its Associate Legal Remedial  
R.Kamalakkan  
Having its office at  
1st Floor Centennial Square,  
6A Dr Ambedkar Salai,  
Kodambakkam, Chennai 600 024

... Applicant

Vs.

Martin TK  
Thayyil House North Kuthiathode P O  
Puthenvelikkara Kuthiathode,  
Landmark - Church Road,  
Ernakulam, Kerala 683 594.

...Respondent

**Prayer:** Arbitration Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9(ii)(b)(d) & (e) of the Arbitration Act, 1996, to appoint an Advocate Commissioner to seize and deliver the Hyundai Motor India Ltd - Hyundai Creta 1.6 CRDI SX bearing Engine No.D4FBFM374666, Chassis No.MALC381ULFM16111 bearing Reg.No.KL42K9669 with all accessories fitted to the Vehicle Lying at Thayyil House North Kuthiathode P O Puthenvelikkara Kuthiathode, Landmark - Church Road, Ernakulam,



Kerala 683 594, or wherever morefully described hereunder, with police aid or break open the premises or from wherever found and handover the same to the Applicant.

For Applicant : Mr.N.K.Vanan

### **ORDER**

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) for appointment of an Advocate Commissioner to seize and deliver the Asset more fully described in the schedule to the Judges Summons.

2. When this application came up for hearing on 20.08.2025, 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 vehicle 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 13.02.2020. 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 14.09.2022. They have also filed a statement of account dated 07.08.2025. As seen from the same, Rs.3,25,991/- is due and payable by the respondent to the applicant. The said amount includes the*



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*future installments, penal interest and other incidental charges. However, as on date, the respondent is in arrears of installments, which amounts to Rs.2,30,357/-.*

*3. Under the agreement for loan cum hypothecation dated 13.02.2020, the applicant is empowered to repossess the vehicle from the respondent in case they commit default in the repayment of the loan. The applicant has expressed its difficulties to repossess the vehicle on their own. Under those circumstances, they have filed this application, seeking for appointment of an advocate commissioner to repossess the vehicle. The applicant has also undertaken to initiate arbitration in accordance with clause 13 of the agreement for loan cum hypothecation dated 13.02.2020.*

*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 vehicle even after repossession by the advocate commissioner, this Court is putting the respondent on terms. According to the applicant, a sum of Rs.2,30,357/- is due and payable by the respondent to the applicant towards arrears of installments i.e., more than 6 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) M. V. Bibin Mahesh, Advocate having address at No.153/47, C.T.H. Road, New Washermanpet, Chennai - 600 081 (Mob. No.96770 29430) is appointed as the advocate commissioner to re-posses the vehicle morefully described in the schedule to the Judges Summons from the respondent from his 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) The advocate commissioner, immediately after re-possessing the subject vehicle, shall intimate the respondent*



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*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.2,30,357/-;*

*d) The respondent on payment of Rs.2,30,357/- to the applicant within a period of three days from the date when the subject vehicle was re-possessed, is entitled for return of the seized vehicle, provided an undertaking is given by the respondent that the respondent shall pay the future installments on the due dates, without any default. On receipt of the sum of Rs.2,30,357/- within the stipulated time as stated supra, the applicant shall redeliver the subject vehicle 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 vehicle 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 vehicle, 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 vehicle 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 vehicle;*

*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 24.09.2025.*



*Private Notice is also permitted."*

3. Today, when the matter was taken up for hearing, learned counsel for applicant submitted that notice sent to the respondent has been returned with an endorsement "Addressee out of India" and affidavit of service has been filed before this Court. However, there is no representation for the respondent either in person or counsel. Hence, the apprehension raised on the side of the applicant that the respondent is trying to secret the Asset is *prima facie* established.

4. In view of the above, in the place of Advocate Commissioner, Mr.Krishna Prasad, Legal Manager, is appointed as Receiver for seizing the subject Asset from the respondent or wherever it is found and by breaking open the premises, if required, with police aid.

This application is disposed of in the above terms.

**15.10.2025**

*mk*

Index: Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation Case : Yes/No

**N.ANAND VENKATESH, J.**

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**15.10.2025**