



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb Appln No. 1202 of 2025

1. Mercedes Benz Financial Services
India Pvt Ltd.,
(formerly known as M/s. Daimler
Financial Services India Private
Limited) 5th Floor, Plot 8, Baashyam
Willow Square, 9 and 10, First Street,
Thiru vi ka Industrial Estate, Guindy,
Chennai-600032, Tamil Nadu, India.
Represented by its Authorised
Signatory Mr.Sadam Hussain S

Appellant(s)

Vs

1. Shivanna A
No.210, 10th Cross 5th Main
Padmanabha Nagar, Bangalore
Karnataka 560 070.

Respondent(s)

PRAYER

Appoint an Advocate Commissioner to seize and deliver the Asset Mercedes- Benz C220CDI Vehicle bearing Registration No.KA 04 MR 5157, Engine No.65192132633805 and Chassis No.WDD2050022F149734 available at the Respondent premises or wherever found and permit the Advocate Commissioner to obtain police aid and to break open the premises.



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For Appellant(s): M.Nagalakshmi

ORDER

This application has been filed for appointment of Advocate Commissioner to seize and deliver the vehicle from the respondent to the applicant.

2.The applicant had filed the earlier application in A.Nos.428 of 2023 and on 29.09.2023, 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 seize the vehicle, morefully, described in the schedule to the Judges Summons.

2.The respondent has been served through substituted service. The name of the respondent is also printed in the cause list today. Therefore, the respondent is set exparte by this Court.

3.The applicant is a Non-banking Financial Institution. The respondent has availed a financial facility for the purchase of a vehicle, morefully described in the



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schedule to the Judges Summons from the applicant and he has entered into a Loan Agreement. There arose disputes between them. Under the said Loan Agreement, the said dispute was referred to Arbitration in accordance with the Arbitration Clause contained in the Loan Agreement. The Arbitrator has also acted upon the reference and has passed an Arbitral Award dated 09.07.2021. Under the Arbitral Award, the respondent has been directed to pay a sum of Rs.26,27,115/- together with interest and costs to the applicant. Under the said loan agreement, the applicant is empowered to repossess the vehicle from the respondent in case he commits default in repayment of the loan.

4.Since an Arbitral Award has also been passed in favour of the applicant and till date, the applicant is unable to repossess the vehicle from the respondent, the prayer sought for in this application by the applicant has to be granted. The applicant has also expressed its difficulty to repossess the vehicle on its own from the respondent. The applicant has also stated that only now the vehicle is traceable. Therefore, this Court is of the view that a prima facie case, balance of convenience and irreparable loss have been established by the applicant in this application.



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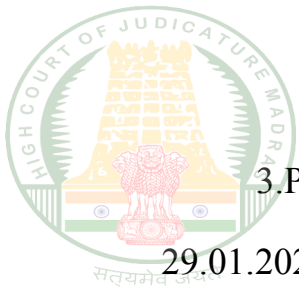
5.For the foregoing reasons, this Court issues the following directions:

a)Mr.V.Veerapandian, Advocate, having Office at No.223, N.S.C. Bose Road, Y.M.C.A. Building, 3rd Floor, (Opp. High Court), Chennai - 600 001 (Mobile No.9710976311) is appointed as an Advocate Commissioner to repossess the vehicle morefully described in the schedule to the Judges summons.

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

c)The Advocate Commissioner shall be paid an initial remuneration of Rs.20,000/- and the same shall be paid within a period of one week from the date of receipt of a copy of this order or before the Advocate Commissioner executes the Warrant of Commission in accordance with the directions given by this Court. The Boarding, lodging and travel expenses shall be paid by the applicant to the Commissioner for executing the warrant of Commission.

6.Accordingly, this application stands disposed of. Post the matter on 06.11.2023 'for reporting compliance'.



3. Pursuant to the above order, the application was closed by order dated 29.01.2024 and the said order is extracted hereunder:

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This Arbitration Application has been passed after the Award came to be passed by the learned Arbitrator on 09.07.2021. By an order dated 29.09.2023 Mr.V.Veerapandian, Advocate was appointed as an Advocate Commissioner to repossess the vehicle morefully described in the schedule to the Judges summons. Thereafter, more than three extension have been sought for, till date.

2. The Advocate Commissioner has been unable to execute the warrant as the vehicle is not traceable.

3. The applicant has an option to explore the possibilities for enforcing the Award before the Execution Court.

4. Considering the same, no further orders are required in this arbitration application. Liberty is given to move the Execution Court.

4. After the above order was passed by this Court, the applicant was able to identify the vehicle and immediately thereafter, the present application has been filed before this Court.

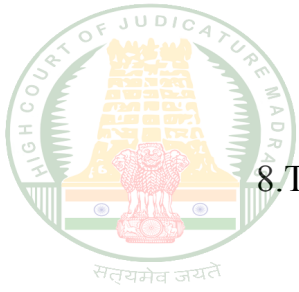


5. It is seen from records that the award was passed on 09.07.2021.

Thereafter, the applicant has not taken any effort to execute the award and the applicant is filing one application after another before this Court to seize the vehicle through appointment of an Advocate Commissioner. This Court cannot be used as a recovery agent by the applicant. Even though an application is maintainable post award under Section 9 of the Arbitration and Conciliation Act, 1996, it is only for the purpose of safeguarding the interest of the applicant till proper execution proceedings are initiated. If the applicant fails to execute the award for execution proceedings for years together, this Court cannot entertain one application after the other for appointment of Advocate Commissioner to seize the vehicle.

6. The present application is not maintainable in the light of the Order passed by this Court on 29.01.2024, wherein this Court made it clear that the applicant has to explore the possibility of enforcing the award before the executing Court. Even thereafter, the applicant has not chosen to file any execution proceedings.

7. In the light of the above discussion, this Court is not inclined to entertain this application and it is left open to the applicant to workout the remedy before the executing Court, by filing an appropriate application.



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8. This application is disposed of in the above terms. No costs.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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Padmanabha Nagar, Bangalore
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N.ANAND VENKATESH J.
KP

Arb. Application No.1202 of 2025

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