



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. 1259 of 2025

1. M/s IndusInd Bank Ltd
Rep. by its Assistant Vice
President, A. Ganesh Kumar,
Consumer Finance Division, No.
34, G N Chetty Road, T Nagar,
Chennai - 600017.

Appellant(s)

Vs

1. Manish Awana
S/o. Bijji Awana, 122 Near B-44,
Harola Sector 5, Noida, Gautam
Buddha Nagar, Uttar Pradesh
20131.

Respondent(s)

PRAYER

To pass an order of appointment of an Advocate Commissioner to seize and deliver the Vehicle/Machine JCB India Ltd 3DX CEV-IV/1.1/0.26/4WD/HD/LL bearing Vehicle Reg.No.UP16LT5309 Vehicle Engine No.H00393295 and Chassis No.HAR3DXS4K03302650 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(s): M/s.Meera Gnanasekar

For Respondent: -



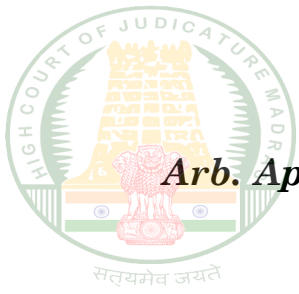
ORDER

This application has been filed for appointment of Advocate Commissioner to seize and deliver the equipment to the applicant lying in the custody of the respondent, their men, agents, servants etc., with police aid and break open premises if necessary.

2. Heard the learned counsel for the Applicant and carefully perused the materials available on record.

3. The specific case of the applicant is that the respondent has not paid more than twelve instalments and notice was issued to the respondent in this regard on 11.07.2025. The applicant has also given an undertaking that they will initiate arbitration proceedings.

4. In the considered view of this Court, to invoke Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act”), there must be a manifest intention to arbitrate. The law on this issue was spelt out by the Apex Court in ***[Firm Ashok Traders and another Vs. Gurumukh Das Saluja and others]*** reported in ***2004 3 SCC 155***. The law was again reiterated by this Court in ***[M/s. Cholamandalam Investment and Finance company Ltd. Vs. Harkhabhai Amarshibhai Vaghadiya]*** in



Arb. Appln. No.40 etc., of 2022.

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5. It is true that trigger notice under Section 21 of the Act is not imperative. However, there must be a manifest intention to arbitrate the moment dues become payable. In this case, totally more than twelve instalments have not been paid and the notice has been issued to the respondent as early as in July 2025. In view of the same, this Court finds that there is lack of intention to arbitrate.

6. In the light of the above discussion, it is made clear that the right of the applicant is left open to agitate the same before the Arbitral Tribunal and similar prayer can be made under Section 17(1) (ii) (d) of the Act. If such a course is adopted by the applicant, it is left open to the Arbitral Tribunal to decide the same on its own merits and in accordance with law.

7. This Application is disposed of in the above terms.

01-09-2025

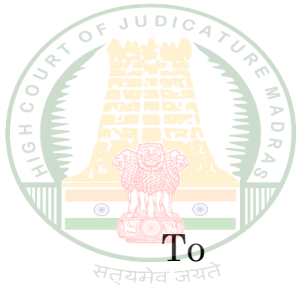
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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No



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