



Arbitration Application No.1271 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Application No.1271 of 2025

M/s.Smart Credit India Finance Limited,
Formerly known as Karur Gayathiri Finance Limited,
represented by its Authorized Signatory Mr.K.Jamal Basha,
Having Office at - 5/26, Nachiyar Towers,
E.V.R.Salai, K.K.Nagar,
Tiruchy - 620 021. Applicant

Vs.

Sampathkumar S.
S/o.Sethuraman Respondent

PRAYER

To pass an order of appointment of an Advocate Commissioner to seize and deliver the vehicle/Machinery TOYOTA Kirloskar Motor Pvt Ltd, Innova 25 V bearing Vehicle Reg.No.TN10AC3522, Vehicle Engine No.2KD6738174 and Vehicle Chassis No.MBJ11JV4007263989 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 : Ms.Meera Gnanasekar

ORDER



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This application has been filed seeking appointment of an Advocate Commissioner to seize and deliver the vehicle/machinery to the custody of the applicant, available at the premises of the respondent or wherever it is found and to permit the Advocate Commissioner to obtain police aid and to break open the premises, if required.

2. This Court heard the learned counsel for the applicant and perused the materials available on record.

3. The applicant is a non-banking finance company [NBFC]. The respondent approached the applicant for purchase of the vehicle/machinery in the year 2022. They entered into a hypothecation cum loan agreement dated 28.09.2022 and as per this agreement, the applicant sanctioned a total amount of Rs.5,50,000/- which was repayable in 42 monthly installments. The period of the loan was from 10.10.2022 to 10.03.2026. The respondent had hypothecated the vehicle/machinery to the applicant and created a charge in favour of the applicant as a security for the said loan.

4. The grievance of the applicant is that the respondent started



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committing default and was irregular in making the EMI payments. As on 12.07.2025, nearly 13 EMIs are due and payable and thus, the respondent became a chronic and wilful defaulter. The respondent paid the last installment amount on 24.03.2025 and thereafter, no amount was forthcoming. The applicant expressed its intention to recall the loan through a notice dated 17.12.2024. Thereafter, the trigger notice dated 28.12.2024 under Section 21 of the Arbitration and Conciliation Act, 1996 [for brevity "the Act"] was issued. It is under these circumstances, the present application came to be filed before this Court seeking for appointment of Advocate Commissioner to seize and deliver the vehicle to the custody of the applicant.

5. In the considered view of this Court, the last installment was paid by the respondent in March 2025. Nearly, 13 EMIs have become overdue and notice under Section 21 of the Act was issued on 28.12.2024. It is submitted that thereafter an Arbitrator was also appointed and the same is pending. In view of the same, it is always left open to the applicant to file an application under Section 17 of the Act. Whatever reliefs can be granted by this Court under Section 9 of the Act,

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can be granted even by the Arbitrator under Section 17 of the Act. Useful reference can be made to the judgment of this Court in Arbitration Application No.40 of 2022 *etc.* batch dated 16.02.2022 and specific reliance can be made to paragraph Nos.xxxv and xxxvi.

6. In the light of the above discussion, this Court is not inclined to exercise its jurisdiction under Section 9 of the Act and liberty is granted to the applicant to move an application under Section 17 of the Act before the Arbitrator and the same shall be dealt with on its own merits and in accordance with law and orders can be passed.

This application is disposed of in the above terms.

03.09.2025

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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