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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2025

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THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb.Appln. No.16 of 2025

Axis Bank Ltd.,
rep. by its Deputy Manager Selvaraj .. Applicant

vs

Vishal Subhash Dhavan .. Respondent

ORDER

This application has been filed seeking for appointment of an employee as a party Receiver to re-possess the vehicle from the respondent.

2.The question of appointment of the applicant's own employee as a party Receiver does not arise for the following reasons:

a)An employee of the applicant will not be a neutral person;

b)Under the contract entered into between the applicant and the respondent, the applicant is having the power to re-possess the vehicle on their own. If at all they want to re-possess the vehicle, without approaching



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this Court, they could have very well re-possessed the vehicle on their own;

c)When the applicant has approached this Court for re-possessing the vehicle, necessarily a neutral person will have to be appointed for the same as only then, neutrality can be maintained.

3.After this Court made its preliminary observations, the learned counsel for the applicant would now submit, on instructions that the applicant is now willing for appointment of an Advocate Commissioner to re-possess the subject vehicle. Since the applicant is willing for appointment of an Advocate Commissioner even though a prayer has been sought for in this application for the appointment of the applicant's own employee as a Receiver, this Court is now considering the application, on merits.

4.As seen from the averments contained in the affidavit filed in support of this application, the respondent has committed default in re-payment of the loan to the applicant. The respondent had availed loan for the purchase of a vehicle from the applicant and he had agreed to pay the said loan amount in installments. As seen from the averments contained in



the affidavit filed in support of this application, the respondent had paid only few installments after which he has committed default in the payment of the remaining installments. As on date, a sum of Rs.19,51,716/- is due and payable by the respondent to the applicant under the loan contract. The loan contract contains an arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause. Under the loan contract, the applicant is entitled to re-possess the vehicle from the respondent in case the respondent commits default in the repayment of the loan.

5.The applicant has stated that they are having difficulty in re-possessing the vehicle from the respondent on their own. Only under those circumstances, this application has been filed.

6.Even though the applicant has sought for appointment of their own employee as a party Receiver to re-possess the vehicle as observed supra, this Court is not inclined to appoint the applicant's own employee as a party Receiver. Instead, this Court is inclined to appoint an Advocate Commissioner, who will be a neutral person, to re-possess the vehicle from



the respondent.

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7.It is made clear that once this Court appoints an Advocate Commissioner, the applicant shall initiate arbitration and if there is no consensus between the parties with regard to the name of the Arbitrator, the applicant shall file an application under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator within a period of 90 days from the date of receipt of a copy of this order.

8.Since a prima facie case has been made out by the applicant for the appointment of an Advocate Commissioner and balance of convenience and irreparable hardship have also been established, this Court is inclined to appoint an Advocate Commissioner to re-possess the vehicle, morefully described in the schedule to the judges summons.

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

a) Mr.Sekhar D, Advocate, having office at C-1, New No.104, Old No.71, K.R.Koil Street, West Mambalam, Chennai - 600 033 (Mob.



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No.9952020095) is appointed as an Advocate Commissioner to re-posses the vehicle morefully described in the schedule to the Judges Summons from the respondent from their premises or wherever they are 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 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.19,51,716/-;

d) The respondent on payment of Rs.19,51,716/- to the applicant within a period of three days from the date when the subject vehicle were re-possessed, is entitled for return of the seized vehicle. On receipt of the sum of Rs.19,51,716/- 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 and if there is no consensus between the parties with



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regard to the name of the Arbitrator, the applicant shall file a petition under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court within a period of 90 days from the date of receipt of a copy of this order and to comply with the statutory requirement as per Section 9(2) of the Arbitration and Conciliation Act 1996;

f) In case, the Advocate Commissioner requires police assistance due to any law and order problem or due to any obstruction caused by the respondents 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 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;

g) The Advocate Commissioner shall be paid an initial remuneration of Rs.25,000/- within a period of one week from th date of receipt of a copy of this order 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.



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Notice to the respondent returnable by 17.03.2025. Private Notice is also permitted.

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ABDUL QUDDHOSE,J.

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