

---

---

**ORDER BELOW EXH.1**  
**IN REGULAR EXECUTION PETITION No.2/2025**

---

---

1. This Execution Petition has been filed by the applicant namely Mass Financial Service Ltd., against the opponent who is decree holder. After issuing notice to the opponents, opponent No.1 remained present before the Court through his Ld. Advocate B. K. Bhavsar and he has filed objection vide Exh.7 against this execution petition wherein he has stated that execution ex-parte is illegal, without giving sufficient opportunity to the opponent, ex-parte proceeded against the opponent and under Section 47 of CPC, present objection is maintainable and loan passed but as per agreement of vehicle was not delivered to the opponent and EMI interest was continued and when opponent was going to deliver vehicle ECCO but at that time said vehicle was already sold to someone by True Value company and without vehicle the opponent has paid three installments to the said finance company and that's way, fraud has been committed by the Mass finance company. Further, mass finance has illegally take away innova vehicle of the opponent and no any loan was taken on the said innova vehicle and there is no any hypothecation available on the said vehicle and consideration is failure in spite of that enforcement of award is illegal and award obtained through suppression, misrepresentation and aforesaid

serious fact is concealed before arbitrator and Ld. Advocate prayed to stay the present Execution Petition.

2. Ld. Advocate of opponent Mr. B. K. Bhavsar has submitted written argument at **Exh. 13** wherein it is stated that agreement of Mass Finance is a defective and appointment of Arbitrator is unilateral is illegal and award passed by the arbitrator is a null and void. The amount of Rs. 2,27,890/- has been deposited in his account by Mass Finance but said amount is not of free loan and it was for a specific purpose. Further submitted that contract is valid when lawful consideration completed and under Section 54 of Contract there is a failure of consideration and further argued that if contract is valid then award can be consider as valid. Further, there is a defect in agreement and there is no Registration Number of Vehicle, chasis No. and Engine No. in agreement. So, award may be quashed under Section 7 of Arbitration Act. Further, submitted that petitioner has not calculated amount of Rs. 3,34,473/- properly and calculation is not proper in award and also not mentioned how to calculate this amount and as per section 36 blind execution is not maintainable and as per Section 34 (2)(b) (ii) of Arbitration Act, award contrarary to public policy of India is liable to be set aside and under Section 36 of Arbitration Act even if award exists, execution Court must refuse execution. Lastly, he requested to reject the present execution petition. In support of his submission, he relied upon the following judgement.

*1. In the case of TRF Limited Vs. Energo Engineering Project Ltd, decided by Hon'ble Supreme Court, rendered in Civil Appeal No. 1306 of 2017*

*2. In the case of Urban Improvement Trust, Jodhpur Vs. Gokul Naren and Anr, decided by Hon'ble Supreme Court, reported 1996 AIR 1819.*

*3. In the case of Bharat Broadband Network Ltd. Vs. United Telecoms Limited, decided by Hon'ble Supreme Court, rendered in Civil Appeal 3972 of 2019.*

*4. In the case of Jagdish Chander Vs. Rameshchander and Ors, reported in AIR online 2007 SC 107.*

3. On behalf of Mass Finance Service Ltd. Mr. Deepak Darji who is authorized person of said company remained present before the Court and submitted that Opponent has taken loan from the Mass Finance Company for the purpose of purchase of old vehicle. But they not gone for taking delivery of vehicle and liability as per agreement to take delivery is on the customer side and finance company has deposited amount in account of Opponent No. 1 namely Jitendrabhai Thakarda and he has not repaid that amount to the mass finance company Ltd. and in agreement registration No. and chesis number is not written because opponent has to purchase old vehicle as the details of the vehicle was not with Finance Company. Further, if vehicle is not delivered even though opponent has paid three installments and opponent has not informed to the Mass Finance company regarding non delivery of vehicle and opponent has purchased other vehicle and as per allegation

of opponent that Innova car vehicle taken by person of Mass Finance Company but such vehicle is not with the Mass Finance Company. Further, submitted that in agreement there is a arbitration clause and as per this agreement mass finance company has appointed arbitrator of PRESOL360 institution which is recognized by the Ministry of Law and Justice so the unilateral appointment of arbitrator is not unilateral. Further, Mass Finance Company has given notice to the opponent which is served to the opponent and arbitrator has also issued notice to the opponent which is also served. But, opponent has not taken any objection regarding appointment of arbitrator. Further, judgement relied by opponent is not applicable because fact is different. Hence, requested to reject the objection of opponent. In support of this submission, he has relied upon the opinion on institution of PRESOL360 by Hon'ble Chief Justice of India namely Mr. Uday U. Lalit.

4. Considering objection of opponent and submission of respective parties and judgement relied by Opponent side. I have perused the arbitrator's award and in the loan agreement duly signed by the opponent, arbitrator has given notice to the opponent which is served and in support thereof, Mass Finance Company produced the delivery tracking report but it appears that opponent has not taken any objection before the arbitrator further looking to the award as well as notice the registration number of vehicle has been mentioned and arbitrator has considered the document of the claimant. Further, arriving to the argument

of opponent side his submission is that appointment of arbitrator is unilateral. Considering this submission herein Mass Finance company has not chosen the arbitrator for conducting the arbitral proceedings but said company approached in ODR institution PRESOLV360. This institution selected one arbitrator from its panel and appointment by the Institution is not hit by Section 12(5) of the Arbitration and Conciliation Act and this institution is enlisted by the department of Justice, Government of India. Further, opponent had not shown any circumstances as specified in the 7<sup>th</sup> Scheduled have been existing. Therefore, sole arbitrator appointed through ODR platform per-se cannot be held to be ineligible under Section 12(5) of the Act. Further, it is well established that a challenge to the appointment of an arbitrator other than on the ground of ineligibility under Section 12(5) of the Act has to be in accordance with the procedure set out in Section 13 of the Act. Hence, this submission of opponent regarding unilateral appointment of arbitrator is not believable. Further, Ld. Advocate has argued regarding the calculation of loan amount, but Mass Finance Company produced the customer ledger of opponent No. 1 which is considered by the arbitrator. Hence, this submission is also not believable. Further, Ld. Advocate has submitted that vehicle was not delivered by the True Value Agency but looking to the agreement by the parties wherein specifically mentioned that borrower accept the entire risk for non delivery of vehicle etc... So, it is not liability of the finance company

and opponent has not repaid the loan amount which was credited in his account and not also taken appropriate steps for non delivery of vehicle. Further, Ld. Advocate of opponent side submitted that person of Mass finance Company Ltd had taken away his Innova Car. But, he has not filed any complaint till filing of the present execution petition and opponent has produced the copy of written complaint filed before the Jadar police Station on dated 08.01.2025. So, this submission is also not believable. Further, I gone through the judgment relied by Ld. Advocate of opponent but, said judgements are not helpful to the opponent at this stage as the fact is different from the present petition and submission of the Mass Finance Company Ltd. Further, opponent has not filed application under Section 34 of Arbitration Act and he has filed objection execution petition and as per section 34 (3) an application for setting a side may not be made after three months have elapsed from the day on which the party making that application had received the arbitral award or he had been made request under Section 33 from the day of which that request had been disposed of by the Arbitral Tribunal. Herein this case, when arbitral award had received to the opponent is not mentioned by the opponent and all other submission of opponent is also not believable.

5. In view of the same no ground as available under Section 34 of the Arbitration and Conciliation Act exists in the present case and there is a valid arbitration agreement and petitioner has proper notice of appointment of the arbitrator

and the award has been passed by Neutral person. So, the objection of the opponent is hereby dismissed.

Signed and Pronounced in the Court today on **29<sup>th</sup> day of January-2026.**

Place : Idar

Date: 29/01/2026

**(Kishorkumar Shambhubhai Hirpara)**

GJ00504

Motor Accident Claims Tribunal (Auxiliary)

2<sup>nd</sup> Additional District Court

Sabarkantha @ Idar

//ktsl/