

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

OP(C) NO. 606 OF 2025

AGAINST THE ORDER DATED 23.01.2025 IN IA 3/2025 IN MA(ARB.) NO.22
OF 2025 OF ASSISTANT SESSIONS COURT/PRINCIPAL SUB COURT / COMMERCIAL
COURT, ERNAKULAM

PETITIONER:

AKBAR BIN KHALAM
AGED 34 YEARS
S/O. ABDUL KALAM, CHALAYAM DALE, KOZHIKODE WEST,
AYANIVELIKULANGARA, S.V MARKET, KOLLAM, PIN - 690573

BY ADVS.
M.S.AMAL DHARSAN
NOEL JACOB

RESPONDENTS:

- 1 HINDUJA LEYLAND FINANCE LIMITED
HAVING ITS REGISTERED OFFICE AT PLOT NO. C-21, TOWER C (1-3
FLOORS), G BLOCK, BANDRA KURLA COMPLEX, BANDRA (E),
MUMBAI – 400051, AND HAVING ITS STATE HEAD OFFICE AT IIND
FLOOR, KARIM’S BUILDING, WARRIAYAM ROAD, ERNAKULAM,
REPRESENTED BY ITS LEGAL MANAGER, MR. ARUNLAL A.H, PIN -
682016
- 2 SHAHIDA
AGED 56 YEARS
W/O. ABDUL KALAM, CHALAYYAM, KOZHIKODE WEST,
AYANIYEEKIKULANGARA, SV MARKET KOLLAM, PIN - 690573



BY ADVS.
M.A.JOSEPH MANAVALAN
HEADSON P.J.(K/1208/2025)
BEA MARY BENNY(K/000129/2021)
ANANTHAKRISHNAN R.(K/873/2023)
JOSEPH C.J.(K/3425/2022)
Sooraj Thomas Elenjickal
P.PARAMESWARAN NAIR(K/814/1989)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08.04.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

(Dated this the 8th day of April, 2025)

The petitioner has approached this Court challenging Ext.P3 order, and for a direction to the 1st respondent to return the vehicle - Hyundai Excavator R210 Smart Plus. The 1st respondent had filed MA (Arb) No.22/2025 before the Commercial Court, Ernakulam, under Section 9 of the Arbitration and Conciliation Act, 1996, for appointing an Advocate Commissioner for taking the possession of the scheduled property.

2. The petitioner had entered into a loan cum hypothecation agreement dated 17.06.2023 with the respondent, for availing a loan for an amount of Rs. 69,32,203/- to be repaid in 46 monthly installments for purchasing a vehicle- Hyundai Excavator R210 Smart Plus. The monthly EMI fixed was Rs.1,50,700/-. The petitioner had defaulted the regular installments from 05.08.2023, by paying only partial amounts.



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3. It is submitted by the counsel for the petitioner that Ext.P1 was filed by the respondent on the pretext that they have not initiated arbitration proceedings. The petitioner has produced Ext.P5, notice issued by the Arbitrator directing him to appear for hearing on 18.12.2024 by 3.00 pm at Chennai. The petitioner has engaged a lawyer to appear before the Arbitrator, and he has entered appearance and the matter was adjourned to 03.02.2025, to make some payments to regularize the loan account. At the same time, the respondent, on the strength of the order by the Commercial Court, had taken possession of the vehicle.

4. On 25.03.2025, the 1st respondent brought to notice the total defaulted amount of Rs.19,26,236/- and the counsel for the petitioner submitted that he is ready to pay the entire defaulted amount in installments. Therefore, an order was passed directing the petitioner to remit an amount of Rs.1 lakh, on or before 04.04.2025 and if the amount is remitted, the



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possession of the vehicle to be given to the petitioner.

5. Thereafter, the case was posted yesterday (07.04.2025), and it was informed that although an amount of Rs.1 lakh has been remitted, the possession of the vehicle has not been given. Therefore, an order was passed directing the 1st respondent to release the vehicle yesterday evening by 6 pm on the basis of the order dated 25.03.2025, and if not, the competent officer representing the 1st respondent to appear in person on 08.04.2025 at 10.15 am.

6. Mr.Arunlal A.H, representing the 1st respondent, appears today at 10.15 am, and submits that steps have been taken to release the vehicle, and he has also informed this Court, the total outstanding amount as of January, 2025, is Rs.19,26,236/- and the overdue amount for the months of February and March, 2025. The total outstanding amount as of today would come to Rs.21,27,636/-.

7. The counsel for the petitioner seeks indulgence



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of the Court to grant 13 installments to wipe out the overdue amount. The counsel for the 1st respondent vehemently opposed the same and submits that the maximum installments that can be granted is 10.

8. It is now submitted by the counsel for the 1st respondent that the vehicle will be handed over to the petitioner.

9. Taking into consideration the facts and circumstances of the case, and also the fact that the vehicle is under the custody of the 1st respondent from January, 2025 onwards, I deem it appropriate to dispose of this original petition as follows:

- i) The petitioner shall remit the overdue amount of Rs.21,27,636/- (Twenty one lakhs twenty seven thousand six hundred and thirty six only) in equal monthly installments by 31st March, 2026, along with regular installments. The first installment is to be paid



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on or before 5th May 2025, and the remaining installments on or before the 5th day of each succeeding months.

ii) If there is any default in one installment of the overdue amount or regular installments, the petitioner shall give back the possession of the vehicle to the 1st respondent, within three days of the default, in the same condition as it was obtained from the respondent.

iii) The petitioner shall also give an undertaking to the 1st respondent that he will abide by the conditions incorporated by this Court, and the amount will be paid in accordance with the Schedule.

The original petition is disposed of as above.

Sd/-

BASANT BALAJI
JUDGE

APPENDIX OF OP(C) 606/2025

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE APPLICATION MA (ARB) 22/2025 ON THE FILES OF COMMERCIAL COURT, ERNAKULAM |
| Exhibit P2 | TRUE COPY OF THE APPLICATION NUMBERED AS I.A NO. 3/2025 ALONG WITH AFFIDAVIT FILED IN MA (ARB) NO. 22/2025 ON THE FILES OF THE COMMERCIAL COURT, ERNAKULAM |
| Exhibit P2(a) | TRUE COPY OF THE ADDITIONAL AFFIDAVIT FILED IN I.A NO. 3/2025 IN SUPPORT OF THE PRAYER FOR POLICE ASSISTANCE |
| Exhibit P3 | TRUE COPY OF THE ORDER DATED 23/01/2025 IN I.A. NO. 3/2025 IN MA (ARB) NO. 22/2025 ON THE FILES OF THE COMMERCIAL COURT, ERNAKULAM |
| Exhibit P4 | TRUE COPY OF THE SCREENSHOTS OF THE E-COURTS EVIDENCING THE FILING DATE OF EXHIBIT P1 PETITION |
| Exhibit P5 | TRUE COPY OF THE NOTICE DATED 21/10/2024 ISSUED BY SHRI. A MANIVASAKAN (RETD. DISTRICT JUDGE) AS ARBITRATOR IN ARC/HLF/VL/1209 OF 2024 |
| Exhibit P6 | TRUE COPY OF THE DISCLOSURE STATEMENT DATED 21/10/2024 ISSUED BY THE A MANIVASAKAN (RETD. DISTRICT JUDGE) AS ARBITRATOR IN ARC/HLF/VL/1209 OF 2024 |
| Exhibit P7 | TRUE COPY OF THE CLAIM STATEMENT DATED 21/10/2024 FILED BY THE RESPONDENT BEFORE A MANIVASAKAN (RETD. DISTRICT JUDGE) AS ARBITRATOR IN ARC/HLF/VL/1209 OF 2024 |