

(2019) 01 CAL CK 0072

In the Calcutta High Court

Case No : Arbitration Petition (Ap) No. 940 Of 2018

Magma Fincorp Limited

APPELLANT

Vs

Dip Singh & Anr.

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9

Citation : (2019) 01 CAL CK 0072

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : K. K. Pandey, S. Bose

Judgement

The Court : This is an application under section 9 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016 (in short "the Act of 1996").

From the affidavit of service filed by the petitioner it appears that copies of this application were forwarded to all the respondents by speed post with A/D. and they have received the same. Let the affidavit of service filed by the petitioner be kept on record.

It is the case of the petitioner that in terms of the agreement dated August, 14 2015(hereinafter referred to as "the said agreement") the respondent no.1 obtained a loan of Rs.20,06,741/- for acquiring the asset mentioned in Paragraph 6 of the petition. The said asset remains hypothecated in favour of the petitioner. The respondent no. 2 as the guarantor is also a party to the said agreement, which contains an arbitration clause.

Under the said agreement, respondent no. 1 was obliged to repay the amount financed by the petitioner, together with the agreed rate of interest and other charges by way of 55 monthly instalments of Rs. 52,920/- each, but after paying the first 29 instalments and part of the 30th instalment, he failed to pay the balance instalments. In spite of being called upon by the petitioner, the respondents failed to repay the dues of the petitioner or to make over possession

of the hypothecated asset to the petitioner. Therefore, the petitioner terminated the said agreement and filed this application to enforce its rights against the hypothecated asset.

According to the petitioner, as on the date of filing of this application, there remains an amount of Rs.14,50,090/- due and owing by the respondents to the petitioner.

It is submitted on behalf of the petitioner that the hypothecated asset is presently lying at Shajapur in the state of Madhya Pradesh.

Considering the materials on record, I find that the petitioner has made out a prima facie case and the balance of convenience also lies in favour of the petitioner for obtaining an order for appointment of a Receiver to take possession of the hypothecated asset.

Accordingly, Mr. Anjan Deb Sarkar, Advocate of Room No. 7, 10 Old Post Officer Street, Ground Floor, Kolkata-700001 is appointed as the Receiver to take the actual possession of the asset, mentioned in Paragraph 6 to the petition. After taking possession of the hypothecated asset, the Receiver shall keep the same at a safe place to be provided by the petitioner.

The Receiver shall be paid an initial remuneration of 2500 GMs by the petitioner. The petitioner shall also bear the travelling expenses including air fare of the Receiver and provide him with a befitting accommodation at the relevant places. Needless to mention that a competent officer of the petitioner shall all along accompany the Receiver.

If necessary, the Receiver shall approach the Superintendent of Police of the concerned District for obtaining police assistance to implement this order. If the petitioner deposits the requisite fees with the concerned authorities, the Superintendent of Police of the concerned District shall render necessary police assistance to the Receiver to take actual physical possession of the hypothecated asset from the concerned respondent.

The respondents are directed to forthwith inform the petitioner of the present whereabouts of the hypothecated asset.

Let, this application appear, under the same heading, after six weeks. The Receiver shall file his report on the next date of hearing.

Urgent certified website copies of this order, if applied for, be supplied to the petitioner upon compliance with all requisite formalities.

The Receiver and all concerned parties, including the police Authorities shall act on certified website copies of this order.