
(2019) 01 CAL CK 0039
In the Calcutta High Court
Case No : Arbitration Petition No. 938 Of 2018

Magma Fincorp Limited

APPELLANT

Vs

Prashanta Prasad Kar & Anr

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9

Citation : (2019) 01 CAL CK 0039

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : K.K. Pandey, S. Bose

Judgement

This is an application under section 9 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016.

From the affidavit-of-service filed on behalf of the petitioner, it appears that copies of this application have been served upon the respondents. However, none appears on behalf of any of the respondents to oppose this application. Accordingly, this application is taken up for hearing in the absence of the respondents.

It is the case of the petitioner that in terms of the agreement dated April 12, 2016 (hereinafter referred to as "the said agreement") the respondent no.1 obtained a loan of Rs.20,54,662/- for acquiring the asset mentioned in Annexure "B" to the application. The said asset remains hypothecated in favour of the petitioner. The respondent no.2, as the guarantor, is a party to the said agreement, which contains an arbitration clause.

Under the said agreement, the 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 59 monthly instalments of variable amounts, but after paying first the twenty six instalments and part of the twenty seventh 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 presently lying at Balasore, in the state of Odisha.

According to the petitioner, as on the date of filing of this application, there remains an amount of Rs.16,55,399/- due and owing by the respondents to the petitioner.

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 to obtain an order for appointment of a Receiver to take possession of the hypothecated asset.

Accordingly, Ms. Molly Saha, Advocate of Bar Association Room No. 16 is appointed as the Receiver to take the actual possession of the asset, mentioned in Annexure "B" to the application. 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 1800 GMs by the petitioner. The petitioner shall also bear the travelling expenses of the Receiver and provide her 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 concerned Superintendent of Police of the state of Odisha for obtaining police assistance to implement this order. If the petitioner deposits the requisite fees with the concerned authorities, the concerned Superintendent of Police shall render necessary police assistance to the Receiver to take actual physical possession of the hypothecated asset from the concerned respondent.

Let, this application appear, under the same heading, after six weeks. The Receiver shall file her 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.