

(2018) 11 CAL CK 0023
In the Calcutta High Court
Case No : Arbitration Petition No. 752 Of 2018

Magma Fincorp Limited

APPELLANT

Vs

Ratna Nandi & Ors.

RESPONDENT

Date of Decision : 19-11-2018

Acts Referred:

Arbitration and Conciliation Act 1996 — Section 9

Citation : (2018) 11 CAL CK 0023

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").

Mr. K. S. Haque, learned advocate, appears and submits that although he was instructed by the respondents to represent them in this application, but

the respondents have not executed any Vakalatnama in his favour.

Thus, it appears that the respondents are not interested to oppose the interim order pressed by the petitioner in this application.

It is the case of the petitioner that in terms of the agreement dated February 14, 2017 (hereinafter referred to as "the said agreement") the

respondent no.1 obtained a loan of Rs.25,80,600/- for acquiring the asset mentioned in Annexure "A" to the application. 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, 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 57 monthly different instalments, i.e., from first to 50th instalments at the rate of Rs.48,000/- each and from 51st to 57th

instalments at Rs.25,800/- each. But after paying the first 12 instalments, the respondent no.1 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.20,87,495/- 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 Dakshin Hazipur, Diamond Harbour, in the district of South

24 Pargana in the state of West Bengal.

Having considered 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, Ms. Aparna Banerjee, Advocate, 6, Old Post Office Street, 3rd Floor, Room No.79/19, Kolkata - 700 001, is appointed as the

Receiver to take the actual possession of the asset, mentioned in Annexure- A 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.

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 district South 24 Parganas 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 respondent no. 1.

Let, this application appear, under the same heading, after four 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.