
(2018) 06 CAL CK 0002
In the Calcutta High Court
Case No : AP 155 OF 2018

Magma Fincorp Limited

APPELLANT

Vs

Saharab Mondal & Anr.

RESPONDENT

Date of Decision : 13-06-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2018) 06 CAL CK 0002

Hon'ble Judges : ASHIS KUMAR CHAKRABORTY, J

Bench : Single Bench

Advocate : K. K. Pandey, S. Dube

Final Decision : Allowed

Judgement

The Court : 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 the copies of the application forwarded to the respondents by way of personal service were refused to be accepted by them. The postal authority has further issued a certificate that the copies of the application forwarded to the respondents by speed post with A/D have been delivered on them. Let the affidavit of service be kept on record.

However, none appears on behalf of any of the respondents to oppose this application. It is the case of the petitioner that in terms of the agreement dated July 26, 2016 (hereinafter referred to as "the said agreement") the respondent no.1 obtained a loan of Rs.17,79,838/- for acquiring the asset mentioned in paragraph 6 of 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 also 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 48 monthly instalments of variable amounts, but after paying the first fourteen instalments and part of 02nd 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.17,21,956/- 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 Paschim Midnapore, 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, Mr. Raja Ghosh, Advocate of Bar Association (Room No.2) is appointed as the Receiver to take the actual possession of the asset,

mentioned in paragraph 6 of 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 1500 GMs by the petitioner. The petitioner shall also bear the travelling expenses of the Receiver,

and shall provide him a befitting accommodation at the relevant places in the State of West Bengal. Needless to mention that a competent officer of

the petitioner shall all along accompany the Receiver in the state of West Bengal.

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.

Let, this application appear after six weeks, when the Receiver shall file his report. 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.