

(2021) 08 CAL CK 0052
In the Calcutta High Court
Case No : Arbitration Petition No. 318 Of 2021

Srei Equipment Finance Limited

APPELLANT

Vs

Goutam Singh & Anr.

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Citation : (2021) 08 CAL CK 0052

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Swatarup Banerjee, Akansha Chopra

Judgement

Affidavit-of-service filed in Court today be kept on record.

The petitioner seeks appointment of a Receiver in respect of five assets for which loans were disbursed to the respondents in terms of a loan-cum-

hypothecation Agreement dated 15th March, 2018. The fact that the five assets were hypothecated to the petitioner in exchange of the loan would

appear from the terms of the said Agreement. Under Schedule IV â?" The Events of Default â?" the Agreement provides that default by the

Customer (the respondents in this case) in the payment of any of the instalments for repayment, or dishonour of any cheque shall constitute an event

of default. The due date within which such repayment is to be made is clarified as 15th day of every month under Annexure-II to Schedule VII.

Article VII which provides for the remedies available to the petitioner would be clarified from Clause 7.2.1 thereunder which provides that in the

event of default, the petitioner shall have the right to enter and remain in any place where the asset is located and take possession of the said asset.

The Agreement contains jurisdiction clause which provides that Courts in Kolkata

would have exclusive jurisdiction. The arbitration clause further provides that the arbitration shall be held at Kolkata.

According to learned counsel appearing for the petitioner, the respondents have not made repayments after the 22nd instalment which constrained the petitioner to terminate the Agreement on 17th June, 2021. The letter terminating the Agreement tabulates the total dues as approximately Rs.22.90 lakhs.

No one appears for the respondents despite service.

Upon perusing the relevant material on record, this Court is of the view that the petitioner has established a prima facie case for an interim order of protection by reason of the clauses in the Agreement governing the dispute between the parties. The balance of convenience is also in favour of an order being passed as prayed for since Clause 7.2.1 entitles the petitioner to certain specific remedies in the event of default. There are admitted defaults on the part of the respondents in the present case.

In view of the above, there shall be an order in terms of prayer (a) of the Notice of Motion. Ms. Hasi Saha, Advocate, Bar Association Room No. 12, is appointed as Receiver to take physical possession of the assets listed in prayer (a) of the petition. There shall also be an order of injunction restraining the respondents from dealing with the assets which form the subject matter of the dispute till further orders are passed on this petition. The Receiver shall be entitled to a remuneration of Rs.70,000/- to be paid by the petitioner who shall also arrange for travel and accommodation and other incidental expenses of the Receiver since she has to travel to Odisha. The Advocate-on-Record of the petitioner is directed to serve a copy of this order on the respondents within 48 hours from date.

List this matter after four weeks.