
(2018) 06 CAL CK 0082
In the Calcutta High Court
Case No : A.P. No. 18 of 2018

Tata Capital Financial Services Limited APPELLANT
Vs
Arup Mridha & Anr. RESPONDENT

Date of Decision : 26-06-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2018) 06 CAL CK 0082

Hon'ble Judges : ASHIS KUMAR CHAKRABORTY, J

Bench : Single Bench

Advocate : Satarup Banerjee

Final Decision : Allowed

Judgement

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 on behalf of the petitioner, it appears that in terms of the order dated January 25, 2018 notices of this application

were duly published in the newspapers. 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 September 24, 2016 (hereinafter referred to as "the said agreement") the

respondent no.1 obtained a loan of Rs.17,60,000/- for acquiring the asset mentioned in paragraph 2(e) 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 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 46 monthly instalments of variable nature, but after

paying the first 11 instalments and part of the 12th 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 Sonarpur in the state of West Bengal.

According to the petitioner, as on the date of filing of this application, there remains an amount of Rs.14,97,472.09 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 for obtaining an order for appointment of a Receiver to take possession of the hypothecated asset.

Accordingly, Ms. Ratna Ghosh, Advocate of Bar Association Room No.12 is appointed as the Receiver to take the actual possession of the asset,

mentioned in paragraph 2 of the application from the concerned respondent. 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 1300 GMs by the petitioner. The petitioner shall also bear the travelling expenses of the Receiver

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, 24-Parganas(South), in the state of West Bengal for obtaining police

assistance to implement this order. If the petitioner deposits the requisite fees with the concerned authorities, the Superintendent of Police

24Parganas(South) 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 three 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.