

(2018) 02 CAL CK 0033
In the Calcutta High Court
Case No : 1115 of 2017

TATA CAPITAL FINANCIAL SERVICES LIMITED

APPELLANT

Vs

PRALAY SHANKAR SINGH & ANR.

RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 9](#) - Interim measures, etc., by Court

Citation : (2018) 02 CAL CK 0033

Hon'ble Judges : Ashis Kumar Chakraborty

Bench : Single Bench

Advocate : A. Basu Mullick

Judgement

1. 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").
2. From the affidavit filed by the petitioner, it appears that the copies of the application were forwarded to both the respondents and they have received the same. Let the said affidavit of service be kept on record.
3. However, none appears on behalf of any of the respondents to oppose this application.
4. The petitioner claims that in terms of an agreement dated October 28, 2016 (hereinafter referred to as "the said agreement") between the parties, the respondents obtained a loan of Rs.16,50,000/- for purchasing hypothecated asset as described in paragraph 4 of the petition. The said asset stands hypothecated with the petitioner. The respondent no.2 as the guarantor is a party to the said agreement, which also contains an arbitration agreement.
5. Although the respondent no. 1 was obliged to repay the dues of the petitioner, together with the agreed rate of interest and pay other charges to the petitioner by 44 monthly instalments of variable amounts, but after paying the 9th and part of the 10th instalment, it failed to pay any of the balance instalments.

6. According to the petitioner, as on December 9, 2017, Rs.15,03,245/- remains due and owing by the respondents and in spite of being called upon by the petitioner the respondents refused to repay its dues and make over possession of the asset to the petitioner. Thus, after terminating the said agreement, the petitioner has filed this application to enforce its rights against the hypothecated asset, which are presently lying at Sheikhpura, Patna, Bihar. The petitioner has prayed for, inter alia, an order for appointment of a Receiver to take possession of the hypothecated asset.

7. Having considered the materials on record, I find the petitioner has made out a prima facie case of the balance convenience wholly lies in favour of the petitioner for obtaining an ad-interim order for appointment of Receiver as prayed for.

8. Accordingly, Mr. Pratik Chatterjee, Advocate, of Bar Association (Room No. 4) is appointed as the Receiver to take the actual possession of the hypothecated asset described in paragraph 17 to the petition.

9. After taking possession of the hypothecated asset, the Receiver shall keep the same, in his custody, at a safe place to be provided by the petitioner.

10. The respondents are also directed to render all assistance to the Receiver to implement this order.

11. The petitioner shall pay an initial remuneration of 1600 GMS to the Receiver. The petitioner shall bear all travelling expenses of the Receiver and provide him with befitting accommodation (s) at all the relevant places he would be required to visit to carry out this order.

12. If necessary, the Receiver shall approach the concerned Superintendent of Police of the district for police assistance, who shall render all 3 assistance to the Receiver to carry out this order. The petitioner shall deposit the requisite fees for obtaining police assistance.

13. Let this application appear under the same heading 5 weeks hence, when the Receiver shall file his report.

14. Urgent certified photostat copies of this order, if applied for, be supplied to the petitioner upon compliance with all requisite formalities.

15. The parties and all concerned including the Police Authorities shall act on certified photostat copies of this order.