

(2018) 04 CAL CK 0032
In the Calcutta High Court
Case No : A. P. No. 1119 of 2017

TATA CAPITAL FINANCIAL SERVICES LTD.	APPELLANT
Vs	
SINGH EARTH MOVERS & ANR	RESPONDENT

Date of Decision : 30-04-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2018) 04 CAL CK 0032

Hon'ble Judges : ASHIS KUMAR CHAKRABORTY, J

Bench : Single Bench

Advocate : A. Basu Mullick

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").

From the affidavit-of-service filed on behalf of the petitioner, it appears that the postal authority has issued a certificate that the respondents have

received copies of this application, but none appears for any of the respondents to oppose this application.

Let the affidavit of service filed on behalf of the petitioner be kept on record.

The petitioner claims that in terms of an agreement dated October 4, 2016 (hereinafter referred to as "the said agreement") between the parties,

the respondent No. 1 obtained a loan of Rs. 16,62,545/- for purchasing an asset mentioned in paragraph 4 of the application. 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.

Although the respondent No. 1 was liable to repay the loan amount, together with the agreed rate of interest and pay other charges to the petitioner by

34 variable monthly instalments. However, after payment of the first nine instalments, the respondent no.1 defaulted in making payment of the balance

instalments. The petitioner has, therefore, terminated the said agreement and filed his application for appointment of a Receiver to take possession of

the hypothecated asset from the respondent no. 1.

According to the petitioner as on the date of filing of this application, Rs. 14, 14,180/- remains due and owing by the respondent and in spite of being

called, the respondents refused to repay their dues and make over possession of the excavator to the petitioner. According to the petitioner, the

hypothecated asset is presently lying at Balasore in the state of Odisha.

Having considered the materials on record, I find the petitioner has made out a prima facie case of the balance convenience and inconvenience wholly

lies in favour of the petitioner for obtaining an ad-interim order for appointment of Receiver as prayed for.

Accordingly, Ms. Rama Ghosh Dastidar, Advocate of Bar Association Room No. 9 is appointed as the Receiver to take the actual possession of the asset.

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

The respondent no. 1 is also directed to render all assistance to the Receiver to implement this order.

The petitioner shall pay an initial remuneration of 1200 Gms to the Receiver. The petitioner shall bear all travelling expenses of the Receiver including

train fare and shall provide the Receiver with befitting accommodation (s) at all the relevant places she would be required to visit to carry out this

order.

Needless to mention that a competent officer of the petitioner shall all along accompany the Receiver in the State of Odisha.

If necessary, the petitioner shall approach the concerned Superintendent of Police of the district for police assistance and the police authorities shall

render all necessary assistance to the Receiver to carry out this order.

Let this application appear under the same heading 2 weeks after the ensuing summer vacation, 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, all concerned parties, as well as the Police Authorities shall act on certified website copies of this order.