

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-25-2012

Judge : Indira Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET A.P.No.474 of 2012 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE MAGMA FINCORP LTD.Versus SANDEEP KUMAR & ANR.

Petitioner Respondent BEFORE: The Hon'ble JUSTICE INDIRA BANERJEE Date :

25. h June, 2012.

Ms.Sutapa Sanyal, Adv.for the petitioner The petitioner financed purchase by the respondent no.1 of the asset specified in the application.

An agreement in writing was executed, allegedly within the jurisdiction of this Court, in terms whereof the amount financed was to be paid in monthly instalments.

The said agreement, inter alia, contains an arbitration clause and also a jurisdiction clause whereby the parties agreed that Courts in Kolkata alone would have jurisdiction for the purpose of the said agreement.

The respondent no.1 defaulted in payment of instalments.

Disputes have arisen in connection with the said agreement, which as observed, appears to have been executed within the jurisdiction of this Court.

The claim of the petitioner is in excess of Rs.10 lakhs.

As such, this Court has jurisdiction to entertain and decide this application.

However, an application under Section 9 of the Arbitration and Conciliation Act, 1996 not being a suit, this Court is of the view that no leave under Clause 12 of the Letters Patent is necessary.

Prima facie, the respondent no.1 has defaulted in payment of instalments and as such, the petitioner has become entitled to take possession of the asset which is hypothecated to the petitioner.

Prima facie, the petitioner is entitled to sell the asset and realise the sale proceeds thereof towards protanto satisfaction of its claim against the respondent no.1.

The petitioner has made out a strong prima facie case for interim relief.

There will, accordingly, be an interim order of injunction in terms of prayer (b) of the application.

Mr.Sanjay Bardhan, learned Advocate, Bar Association Room No.1 is appointed Receiver to take possession of the asset specified in the petition.

The learned Receiver shall take actual physical possession of the asset, make an inventory of the same and keep the same in a suitable secure place provided by the petitioner.

The learned Receiver shall be entitled to remuneration of 700 GMs to be paid by the petitioner at the fiRs.instance.

The petitioner shall make necessary arrangements for travel and accommodation of the learned Receiver in a manner commensurate with his status as a practising advocate of this Court.

The respondents shall within a week from the date of communication of this order disclose to the learned Receiver the exact location of the asset.

Once the location of the asset is disclosed to the learned Receiver, the asset shall not be removed from the aforesaid location.

If, however, the respondent no.1 pays a sum of Rs.1,72,000/within a fortnight from the date of communication of this order, the learned Receiver need not take actual physical possession.

The learned Receiver shall in that case only take symbolical possession and make an inventory of the asset in question.

The learned Receiver shall, if necessary, be entitled to police assistance and the Superintendent of Police of the concerned district shall render necessary assistance to the learned Receiver.

The matter is returnable on 13th August, 2012.

All parties, learned Receiver and the concerned police authorities are to act on a signed photocopy of this order on the usual undertakings.

(INDIRA BANERJEE, J.) K.

Banerjee AR(CR)

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