

14.12.2020  
Sl. No.1  
srm

**C.O. No. 1468 of 2020**

**Satish Kumar Agarwal & Anr.**

**Vs.**

**Indusiand Bank Ltd.**

Mr. Prateep Mukherjee,

Mr. Sukanta Ghsosh

...for the Petitioners.

Mr. Saptarshi Bhattacharya

...for the Opposite Party.

This revisional application has been filed challenging an order dated January 7, 2020 passed by the learned Chief Judge, City Civil Court at Calcutta in Money Execution Case No.176 of 2017.

Learned Advocate for the petitioners urges that the order impugned was passed on incorrect facts, inasmuch as, the learned Judge presumed that the award debtor had not filed any opposition to the application under Section 36 of the Arbitration and Conciliation Act. He refers to the order sheet and order dated February 26, 2018 from which it appears that an affidavit-in-opposition had been filed by them. The next contention of the learned Advocate for the petitioners is that on his clients' failure to appear on one single occasion, the order of attachment of the moveable property of the award debtor was passed *ex parte*.

Learned Advocate for the opposite party/award holder submits that the petitioners had not challenged the award and as such the order impugned would not cause any prejudice to the award debtor.

It appears that an affidavit-in-opposition to the application under Section 36 of the Arbitration and Conciliation Act was filed and the learned Court below did not take the same into consideration but on the contrary passed the order on the basis that the award debtor had not filed the said opposition. Moreover, the order of attachment ought to have been passed, in all fairness, in presence of both the parties.

It is further submitted by the learned Advocate for the petitioners that another application challenging the maintainability of the execution proceedings is also pending. He submits that the award debtor has challenged the jurisdiction of the learned Court to take up the execution case as the award was passed in Chennai.

Under such circumstances, the order dated January 7, 2020 is set aside and quashed.

The learned Court below is directed to hear the maintainability application and the application under Section 36 of the Arbitration and Conciliation Act within a period of

two months from the date of communication of this order. The award holder is at liberty to file the affidavit-in-opposition to the maintainability application, if not already filed, within a period of two weeks from date.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Shampa Sarkar, J.)**