

ORDER

APOT/137/2022
WITH
EC/48/2021
IA NO.GA/1/2022
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MADHABI MONDAL & ANR.
VERSUS
M/S. CHOLAMANDALAM INVESTMENT
AND FINANCE COMPANY LIMITED

BEFORE

The Hon'ble Justice HARISH TANDON
The Hon'ble Justice PRASENJIT BISWAS
Date: 8TH SEPTEMBER, 2022

Appearance
Mr. Priyankar Saha, Advocate
Mr. Lal Ratan Mondal, Advocate
...for the appellants
Ms. Reshmi Ghosh, Advocate
Mr. Ranjit Singh, Advocate
Ms. Putul Das (Singh), Advocate
..for the respondent

The Court : This appeal arises from an order dated 5th July, 2022 passed by the Executing Court appointing a special officer to take possession of the vehicle in question. Admittedly, by virtue of the agreement the loan was disbursed to purchase the vehicle. The dispute arose and in view of the arbitration clause, the arbitrator was appointed and ultimately an award to the tune of Rs.20,30,030/- along with interest was made and published. It is undeniable that the appellant has challenged the said award under Section 34 of the Arbitration and Conciliation Act,

1996 and equally it is true that the award holder has put the said award into execution under Section 36 thereof. An application was made by the award holder that the possession of the vehicle which is the secured asset (the vehicle) be taken through an officer of the Court which, in fact, has been allowed by the Executing Court by passing the impugned order.

Learned Advocate appearing for the appellant is very much vocal in his submission that there is no fetter on the part of the Court to pass unconditional order of stay pending an application under Section 34 of the said Act which does not appear from the impugned order.

Application for stay was filed but what is revealed therefrom is that there was no order of stay passed by the Executing Court. Therefore, Executing Court was of the view that there is no impediment on its part to proceed to consider the prayer for appointment of the special officer to take possession of the vehicle. After the amendment having brought in the Arbitration and Conciliation Act, 1996, concept of automatic stay of execution proceedings or the efficacy of the award to remain stayed has seen radical change and it is now imperative on the part of the judgment debtor to seek an order of stay by the execution proceedings. Section 36 of the said Act provides that while granting the stay, the Court may put the judgment debtor on terms as it deemed fit. However, an exception is carved out by inserting a proviso thereto where the Court may pass an order of stay unconditionally provided the conditions enshrined therein are

satisfied. It is relevant to note that though the application for stay claimed to have been filed but the Court has not passed any order staying the execution proceedings. All the points which have been agitated before us are required to be considered at the time of hearing of the application for stay and cannot have any bearing in the appointment of an officer to take possession of the secured asset.

So long as the award is staring at the face of the appellant and in absence of any order of stay granted by the Court, we do not find any impediment on the part of the Court to take the possession of the secured asset through an officer of the Court in order to bring equilibrium in the rights of the parties. We, thus, do not find any infirmity in the order.

The appeal and the application are dismissed.

There is no order as to costs.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]