

27th July,
2023
(AK)
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W.P.A 16717 of 2023

Jayanta Kumar Dutta
Vs.
The Ombudsman and others

Mr. Subrata Karmakar
Mr. Debojit Samanta
...for the petitioner.

Mr. Pantu Deb Roy
Mr. Jaladhi Das
...for the State.

Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh
...for the respondent nos.2 & 3.

Learned counsel for the petitioner submits that a vehicle, hypothecated to the petitioner by the Axis Bank, was forcibly taken over by the Bank on April 30, 2022 despite the petitioner having paid thirty installments till then.

Even after the petitioner approaching the Bank immediately, the Bank gave an impression that, upon payment of an amount of Rs.22,000/-, the vehicle would be returned.

However, in defiance of such assurance, the Bank did not return the vehicle.

Learned counsel appearing for the Bank as well as the State submit that the petitioner has already suffered

an arbitral award, pursuant to an arbitration clause in the hypothecation agreement.

Only in implementation of such award, the Bank took possession of the vehicle.

Learned counsel for the State hands over a copy of a report issued by the Superintendent of Police, Purba Bardhaman, which, inter-alia, indicates that the petitioner filed an application under Section 156(3) of the Code of Criminal Procedure before the Chief Judicial Magistrate, Purba Bardhaman, against some of the Bank employees.

After considering all aspects, the Chief Judicial Magistrate directed the Inspector-in-Charge of the Burdwan Sadar Police Station to enquire and submit a report on the allegation.

On September 5, 2022 the Chief Judicial Magistrate, Purba Bardhaman, considering the matter, including the report, rejected the prayer of the petitioner for sending the petition under Section 156(3) of the Criminal Procedure Code for investigation into the allegations, and thereby dropped the miscellaneous case.

A copy of the said report, handed over in court today, be kept on record.

It is clear that the petitioner has already suffered an arbitral award.

Contrary to the submissions of the petitioner, under the Arbitration and Conciliation Act, 1996, unlike the Arbitration Act, 1940, there is no necessity to have a judgment of court on the basis of the award.

The award has the force of a decree and, as such, could have validly been implemented by the Bank.

The Bank further submits that a challenge under Section 34 of the 1996 act against the award is now time-barred.

Upon considering the submission of the parties, it transpires that the respondent-Bank could not be faulted for having seized the vehicle of the petitioner by virtue of due process of law in terms of the arbitral award.

The remedy of the petitioner, if any, lay before the appellate forum under Section 34 of the Arbitration and Conciliation Act, 1996.

Having not done so, the writ petition cannot be entertained.

Accordingly, WPA 16717 of 2023 is dismissed.

However, nothing in this order shall prevent the petitioner from taking recourse to Section 34 of the 1996 Act, subject, of course, to the limitation periods stipulated for such a challenge in law.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)