

OCD-8

ORDER SHEET

AP/369/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

M/S. BINOY TRADING CO. AND ANR.
Versus
TATA MOTORS FINANCE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 14th June, 2023.

Appearance:

Mr. Shyamal Chakraborty, Adv.

Mr. Jayanta Kumar Dhar, Adv.

Mr. Debajyoti Mondal, Adv.

...for the petitioner

Mr. Rohit Banerjee, Adv.

Mr. Saubhik Chowdhury, Adv.

Mr. Tirthankar Das, Adv.

...for the respondent

The Court: This is an application for stay of an Award dated 4th August, 2022. By the impugned Award, the petitioners were directed to pay an amount of Rs.44.84 lakhs. The petitioners were the respondents in the arbitration proceedings.

Learned counsel appearing for the petitioners as well as the respondent/award-holder have shown several documents which would indicate that both the parties have approached the learned City Civil Court in the post-award stage for interim relief. This is undisputed.

The respondent's application was under Section 9 of the 1996 Act for appointment of a Receiver to take possession of the vehicle which was in the possession of the petitioners (before this Court) and order was passed in the said application on 29th December, 2022 appointing a learned advocate to act as the Receiver for taking possession of the concerned vehicle. A subsequent order dated 29th March, 2023 was passed by the learned City Civil Court in a petition filed by the petitioners before this Court (described as the opposite party no.1 in the said order) for release of one of the four vehicles.

The documents hence show that both the parties have approached the City Civil Court for interim relief albeit in a post-award scenario. Section 9 of the Act permits such steps to be taken by the parties for interim relief provided the steps are before enforcement of the award under Section 36 of the Act.

The more important question, however, lies in Section 42 of the Act. Section 42 requires that all subsequent applications arising out of an arbitration agreement under Part-I of the Act must be made in the Court which is first approached by the parties. The Court however must be competent for deciding the applications. There is no dispute that the City Civil Court has the jurisdiction to decide on the applications for interim relief made by both the parties before this Court.

Hence, any relief in terms of the impugned Award including stay thereof must be made before the City Civil Court where the parties are already seeking interim relief against one another. The Court is also informed that the

respondent/award-holder has still not filed for enforcement of the impugned Award.

AP/369/2023 is dismissed for the reasons stated above.

There will be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

bp.