

Item- 03-12-2024
8.

sg Ct. 12

FMAT (ARBAWARD) 11 of 2024
CAN 1 of 2024
CAN 2 of 2024

HDB Financial Services Limited
Versus
Arunava Chakraborty

Mrs. Reshmi Ghosh
Mr. Ranjit Singh
Mrs. Tutul Das
Ms. Pooja Sett
Mr. Ratul Deb Banerjee
Mr. Pranit Biswas
...for the petitioner

Mr. Sounak Banerjee
Ms. Sweta Gandhi
...for the respondent

1. The conduct of the petitioner is unacceptable and beyond reproach. It appears that an award has been passed at Chennai and till date not been served upon the plaintiff. The award holder taking advantage of such award seized the vehicle and sold without initiating any execution proceeding. Curiously the venue of the arbitration was chosen at Chennai although the entire cause of action has arisen in Kolkata and the parties are from Kolkata.
2. It was a unilateral decision of the appellant to enforce the award without giving any opportunity to the plaintiff to challenge the award. The award becomes enforceable only after expiry of the periods mentioned in Section 34. The rights challenge the award accrues on serve of a signed copy of the award upon the plaintiff.
3. Taking advantage of such situation, the appellant has virtually rendered the remedy for restoration of the vehicle

redundant. Although, in view of the existence of the arbitration clause in the agreement, the plaintiff could not have proceeded with the suit, the fact remains that the entire operation orchestrated by the appellant is mala fide.

4. The appellant shall be entitled for rehearing of the application filed under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996, either upon securing the value of the vehicle or restoring the vehicle to its original position, as the case may be, within two weeks from date.
5. On such conditions being fulfilled, it would be open for the appellant/defendant to pray for rehearing of the application filed under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996.
6. However, it would be open for the plaintiff to accept the sale value of the vehicle as full and final settlement of the award as admittedly, there are few defaults in the payments of EMIs.
7. In the event the parties agree to accept the sale consideration in full and final satisfaction of the award, no such exercise may be undertaken.
8. We are prima facie satisfied that the time to file the application for setting aside of the award has not arisen since we are not satisfied with the service effected upon the judgment-debtor by the learned Arbitrator.
9. With the aforesaid observation, the appeal and the application are, accordingly, disposed of.

10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)