

I 10.9.2024

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**F.M.A. 917 of 2024
With
CAN 1 of 2024**

Sayan Goswami and Anr.

Vs.

M/s. Cholanmandalam Investment and Finance Co. Ltd.

**Mr. Sukanta Chakraborty
Mr. Z. Ahemed**

... For the Appellants.

Yesterday when this appeal and application were called on we directed advocate on record for the appellants/petitioners to serve the cause papers and an appropriate notice on the respondent.

An affidavit of service is on record.

Learned counsel for the appellants/petitioners submits that such service has been effected.

None appears for the respondent even today when the matter is called on.

The impugned judgement and order dated 6th June, 2024 was made by the 2nd Bench of the learned City Civil Court, Calcutta. It was in an application under Section 9 of the Arbitration and Conciliation Act, 1996 arising out of a hire purchase agreement between the

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parties. The impugned order appointed a receiver and directed him to take possession of the subject vehicle. Till date possession of the vehicle has not been taken by the receiver.

We find from the order that 5th October, 2024 is the returnable date. The order also stipulates that arbitral proceedings have to be commenced within the time prescribed by Section 9(2) of the said Act by the petitioner failing which the order would stand vacated.

Learned counsel for the appellants/petitioners submits that till date his client has not received any notice of commencement of the arbitral proceedings. If the contention of learned counsel is correct then the order appealed against stands automatically vacated and the Section 9 proceedings would have to come to an end.

In the above view of the matter, the learned court below would be in the best position to appreciate the above facts and pass an appropriate order either retaining the Section 9 application or relegating it to the arbitral tribunal under Section 17. The learned court below would also consider the proposal made by learned counsel for the appellants to pay off a significant portion of the installments that have fallen due.

Therefore, this appeal (FMA 917 of 2024) and the connected application (CAN 1 of 2024) are disposed of with a direction that let this application appear in the regular course before the learned trial court.

Till further orders are made by the said court the receiver will not take possession of the vehicle in question.

(I.P. Mukerji, J.)

(Partha Sarathi Sen, J.)

