

18.09.2025  
Item No. 7.  
Court No.37.  
AB  
(Bench ID 266311)

**FMAT 402 of 2025  
With  
CAN 1 of 2025**

**HDB Financial Services Limited  
Vs  
Aloke Kumar Ghosh & Anr.**

Mr. Shounak Mukhopadhyay,  
Mr. Ranjit Singh,  
Mr. Amar Singh,  
Ms. Tutul Das Singh,  
Mr. Ratul Deb Banerjee,  
Mr. Pranit Biswas ....for the Appellant.

Mr. Chandra Sekhar Jha,  
Mr. Aditya Kumar,  
Mr. Yash Jalan,  
Mr. Hritik Pandit .....for the Respondents.

**Dictated by Arijit Banerjee, J.**

1. Affidavit of service filed in Court today, be kept with the records.
2. This appeal is directed against an order dated September 11, 2025, passed by the Learned Judge, Bench-XI, City Civil Court, Calcutta in Misc. Case No.12129 of 2025 being an application under Section 9 of the Arbitration & Conciliation Act, 1996, filed by the appellant herein.
3. It appears that the respondents availed loan facility from the appellant/finance company for a sum of approximately Rs.43 lakh for purchase of a truck. The truck was hypothecated to the appellant as security for the loan amount. The

loan amount was repayable in monthly installments.

4. According to the appellant, the respondents defaulted in payment of monthly installments and a sum of about Rs.9 lakhs became due and payable. The appellant approached the learned Trial Court with an application under Section 9 of the 1996 Act praying for appointment of Receiver over the hypothecated truck. The learned Trial Court passed an order appointing Receiver directing him to take physical possession of the vehicle in question.
5. That order was carried in appeal by the respondents. A Coordinate Bench of this Court modified the order by directing the present respondents to pay some amount and to continue paying the installments. The Receiver was directed to be only in symbolic possession of the vehicle.
6. It appears that some time thereafter, the present Section 9 application was filed by the appellant herein, the earlier Section 9 application having been dismissed for default in the meantime. In the present Section 9 application, the appellant obtained an ex parte ad interim order for appointment of Receiver over the vehicle in question. Such an order was passed on August 30, 2025.

7. On the returnable date, when the present respondents appeared before the learned Trial Court, they brought it to the notice of the learned Trial Court that the appellant has in the meantime obtained an ex parte arbitral award against the respondents. The learned Trial Court took a serious view of the suppression of this material fact by the appellant/petitioner and directed the Receiver to hand over possession of the vehicle to the respondents. The Trial Court further directed the appellant/petitioner to pay cost of Rs.50,000/- to the District Legal Services Authority, Calcutta. Being aggrieved, the appellant has come up before us.
8. Mr. Mukhopadhyay, learned Counsel appearing for the appellant, in his usual fairness, says that he cannot justify the conduct of his client. It appears that the Delhi Office of his client had proceeded to obtain an ex parte arbitral award against the respondents. Because of communication gap that fact was not mentioned in the Section 9 petition. He very fairly says that he cannot find any fault with the order under appeal as such, but the balance of convenience and inconvenience requires some protection for the vehicle, which is the appellant company's security for the loan advanced to the respondents.

9. We have also heard learned advocate for the respondents. He makes a serious grievance, which is justified, that there was gross suppression of the fact that the appellant/petitioner has already obtained an arbitral award against the respondents. He says that his clients have challenged the ex parte award before the District Court, Rohini, Delhi which is the appropriate forum. Learned Advocate for the appellant disputes that the District Court at Rohini, Delhi is a competent forum.

10. Having considered the rival submissions made on behalf of the parties, we appreciate Mr. Mukhopadhyay's fair stand that his client's conduct cannot be condoned. The Trial Court was absolutely justified in undoing the earlier order that it had passed on the ground of suppression of very material fact. Had it been disclosed in the Section 9 petition that the appellant/petitioner has already obtained an arbitral award in its favour, we doubt very much that the Trial Court would have passed any order on the Section 9 application. This is because the obvious remedy of the appellant would then be by way of execution proceedings.

11. We do not see any reason to set aside the order of the learned Trial Court. However, considering the balance of convenience and

inconvenience and keeping in mind that the vehicle in question is the security for the appellant/company for the loan advanced by it to the respondents, a portion of which has admittedly fallen due, we modify the order of the learned Trial Court to the extent that the Receiver shall continue to be in symbolic possession of the vehicle only. We do not interfere with the portion of the order of the learned Trial Judge which directs return of physical possession of the vehicle to the respondents. The respondents shall inform the Receiver the whereabouts of the truck in question as and when called upon to do so by the Receiver.

12. We do not interfere with the other portions of the order under appeal.
13. The appeal and the connected application stand disposed of.
14. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

**(Om Narayan Rai, J.)**

**(Arijit Banerjee, J.)**