

ORDER SHEET
APOT/15/2025
IA NO:GA-COM/1/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION

LAKSHMAN PRASAD AGARWAL
VS
NEOGROWTH CREDIT PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 25th June, 2025.

Appearance:
Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Anujit Mookherji, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Pourush Bandopadhyay, Adv.
Mr. Pritish Chandra, Adv.
...for the Appellant

The Court:

1. Despite several opportunities and service, the respondent has failed to appear before the Court.
2. APOT/15/2025 is an appeal under Section 37(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). The appellant is aggrieved by an interim order passed under Section 17 of the said Act by a learned Arbitrator sitting at Delhi on 18th November, 2024. The order is quoted below:-

“ ORDER

- a) *It is hereby directed to retrain the respondents from withdrawing any amount from Bank Account No.3102135000009601 in KARUR VYSYA BANK having its IFSC Code KVBL0003102, office Branch at:-KOLKATA SHAKESPEARE SARANI, NO 20 SHAKESPEARE SERRANI, PARK STREET, KOLKATA – 700005;*
- b) *In case the Respondents fails to clear the outstanding amount of the Claimant as above under the Loan Agreement, it is hereby ordered that the claimants are allowed to take possession of the movable/immovable properties/assets specified in Schedule-I of the application by removing same from the possession and custody of the Respondents.*
- c) *Reliefs in terms of prayer (b) to the effect Mr. Bhaskar Barik/Titas Manna Authorized person of the claimant company is appointed as Receiver with the directions to seize the movable/immovable properties/assets specified in Schedule-I of the application by removing same from the possession of the Respondents & prepare the inventory accordingly;*
- d) *The receiver Mr. Bhaskar Barik/Titas Manna is hereby authorized to take necessary police aid for taking possession of the goods mentioned in Schedule 1 and accordingly, the*

SHO/Officer's in charge in whose jurisdiction the movable/immovable properties/assets are found, is directed to provided necessary police aid to the receiver for execution of this order;

- e) Till the possession of the said movable/immovable properties/assets are handed over or taken by the claimant, the respondents, their servants and/or agents are hereby restrained from selling, transferring, and/or creating any third party rights or interest, or parting with possession of the said movable/immovable properties/assets in any manner whatsoever.*
- f) The Receiver shall file his report alongwith inventory prepared (if any) within 10 days from the date of execution of the present order."*

3. The said order has been challenged on the ground of lack of jurisdiction of the learned Arbitrator and the unilateral appointment. An arbitral proceeding is already pending before a learned Arbitrator at Mumbai. The appellant was never informed about the change of venue from Mumbai to Delhi as also the change of an Arbitrator. Initially, the respondent had unilaterally appointed one Mr. Rajendra Brijmohan Agarwal as an Arbitrator. The Delhi High Court terminated the mandate of Mr. Agarwal and appointed Ms. Neeta Jain as a substitute Arbitrator.

4. The appellant had already filed a suit before the City Civil Court at Calcutta and an ad interim injunction was passed. In view of the order passed by the learned City Civil Court on August 24, 2022, the Arbitrator deferred the proceeding. The appellant was surprised to find out that the respondent had initiated a proceeding before the learned Arbitrator at Delhi, without any further reference to the earlier proceeding and without any intimation to the appellant. By a letter dated November 13, 2024, the petitioner raised an objection with regard to the jurisdiction of the learned Arbitrator and brought the order passed in the suit, to the notice of the learned Arbitrator. Without deciding on such questions the learned Arbitrator passed the impugned order, *ex parte*. The order is challenged before this Court on the ground that the learned Arbitrator could not have continued with the proceeding on the ground of unilateral appointment and also because the arbitral proceeding was pending before Smt. Neeta Jain, who was appointed as the substitute Arbitrator by the Bombay High Court. The learned Arbitrator appointed by the Bombay High Court was already in seisin of the matter and had adjourned the proceedings in view of the interim orders passed in the suit.
5. It is next submitted that by the interim order, the operation of the bank account in Karur Vysya Bank, Kolkata, has been restrained and a Receiver has been appointed to seize all immovable and movable assets specified in the Schedule-I of the application.

6. This Court finds that the entire cause of action arose within the Ordinary Original Jurisdiction of this Court. The bank account which has been frozen is within the Ordinary Original Jurisdiction of this Court. Despite several opportunities and intimation to the respondent, it failed to appear. The respondent also continues business within the Ordinary Original Jurisdiction of this Court. It appears that the respondent is not interested to contest this application. The subject matter of arbitration is the loan which was availed of by the appellant and the entire transaction, according to the appellant, as pleaded and as supported by documents took place within the original jurisdiction of this Court. The scope of for interference by this Court under Section 37(2) of the Arbitration and Conciliation Act.

“(2) An appeal shall also lie to a Court from an order of the arbitral tribunal-

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.”

7. Court, under Section 2(1)(e) of the said Act, in the case of an arbitration other than international commercial arbitration, is the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration, as if the same had been the subject-matter of a suit, but does not include

any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes. An appeal was filed in Mumbai from an interim order passed by the arbitrator who was unilaterally appointed. The Bombay High Court passed an order. The law is well settled that the provision of section 42 of the said Act will not apply to an appeal under section 37(2) of the said Act. Reference is made to the decision in ***Pandey & Co. Builders (P) Ltd. vs. State of Bihar and Another*** reported in ***(2007) 1 SCC 467***. Moreover, the respondent waived the venue clause, by approaching the learned Arbitrator at Delhi and the proceeding continued in Delhi.

8. Under such circumstances, in exercise of power under Section 37(2)(b), this Court sets aside the order of injunction and allows the appeal. The reasons behind of such decision are as follows :-

- (a) During the pendency of an arbitral proceeding before an Arbitrator appointed by the Bombay High Court, another Arbitrator, sitting at Delhi passed an exparte interim order which directly impacts and affects not only the day-to-day business of the appellant, but also prevents the appellant from enjoying the assets / movable and immovable properties, auctioned in the schedule.

- (b) The learned Arbitrator sitting at Delhi was unaware of the proceedings in Bombay and was informed on November 13, 2024 about the pending suit. Objection as to jurisdiction and unilateral appointment were raised. The learned Arbitrator was

requested to hold a video conference to enable the appellant to make necessary submissions. The learned Arbitrator did not respond to the said letter and did not decide on the objection raised by the appellant. Such objection was in terms of section 12(3) and 13 of the said Act, which are quote below :-

Section 12(3) is quoted below:-

“12 (3) An arbitrator may be challenged only if— (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or (b) he does not possess the qualifications agreed to by the parties.

Section 13 is quoted below:-

13. Challenge procedure.—(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under subsection (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees”

(c) The learned Arbitrator was required to dispose of the said letter as the letter was in the nature of a challenge to the procedure.

9. The learned Arbitrator shall decide on the objection raised by the appellant first and thereafter, take a decision on the application filed under Section 17 of the Arbitration and Conciliation Act, 1996. The appellant may file an additional objection.

10. The appeal and the connected application are, accordingly, disposed of.

(SHAMPA SARKAR, J.)